

2717 No. 13139

United States
Court of Appeals
for the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL ASSOCIATION OF HEAT
AND FROST INSULATORS AND ASBES-
TOS WORKERS, LOCAL No. 7, A.F.L.,
Respondent.

Transcript of Record

Petition for Enforcement of Order of the
National Labor Relations Board

FILED

FEB - 6 1952

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National Labor Relations Board**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

A. NORMAN SOMERS,
Assistant General Counsel,
For the Petitioner.

L. PRESLEY GILL,
2800 First Ave.,
Seattle, Washington,
For the Respondent.

Form NLRB-508

United States of America
National Labor Relations Board

CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS

Important—Read Carefully

Where a Charge Is Filed by a Labor Organization or an Individual or Group Acting on Its Behalf, a Complaint Based Upon Such Charge Will Not Be Issued Unless the Charging Party and Any National or International Labor Organization of Which It Is an Affiliate or Constituent Unit Have Complied With Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an Original and 4 Copies of This Charge With the NLRB Regional Director for the Region in Which the Alleged Unfair Labor Practice Occurred or Is Occurring.

Do Not Write in This Space

Case No: 19-CB-97

Date Filed: 2/13/50

Compliance Status Checked by:.....

1. Labor Organization or Its Agents Against Which
Charge Is Brought:

Name: International Association of Heat
and Frost Insulators and Asbestos Workers,
A.F.L., Local No. 7.

Address: 13709-15th Avenue, N. E., Seattle,
Washington.

The Above-Named Organization or Its Agents Has Engaged in and Is Engaging in Unfair Labor Practices Within the Meaning of Section (8b) Subsection 2 of the National Labor Relations Act, and These Unfair Labor Practices Are Unfair Labor Practices Affecting Commerce Within the Meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.):

The above-named labor organization, by its officers, agents and employees, has caused the Charles R. Brower Co. to terminate the employment and/or refuse further employment to the following persons in violation of Section 8 (a)(3) of the Act: Uhro A. Kangas, Alfred J. Vollan, and LeRoy D. Luey,

3. Name of Employer:

Charles R. Brower Co.

4. Location of Plant Involved (Street, City, and State):

114 Virginia St., Seattle, Wn.

5. Nature of Employer's Business:

Insulation contractors.

6. No. of Workers Employed:

Approx. 30.

7. Full Name of Party Filing Charge:

Uhro A. Kangas.

8. Address of Party Filing Charge (Street, City, and State):

3447-38th Avenue, S. W., Seattle 6, Washington.

Tel. No.:

Avalon 8776.

9. Declaration

I Declare That I Have Read the Above Charge and That the Statements Therein Are True to the Best of My Knowledge and Belief.

By /s/ UHRO A. KANGAS,

(Signature of representative
or person making charge)

Representative.

(Title or office, if any)

Date: February 13, 1950.

Wilfully False Statements on This Charge Can Be
Punished by Fine and Imprisonment (U. S.
Code, Title 18, Section 80)

Received February 13, 1950.

[Admitted in evidence September 6, 1950, as General Counsel's Exhibit 1-E.]

United States of America
Before the National Labor Relations Board
Case No. 19-CB-97

In the Matter of:

INT'L ASS'N. OF HEAT & FROST INSULA-
TORS & ASBESTOS WORKERS, LOCAL
No. 7,

and

UHRO A. KANGAS.

AFFIDAVIT OF SERVICE OF CHARGE

Date of Mailing: 2/14/50.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Int'l. Ass'n. of Heat & Frost Insulators &
Asbestos Workers, Local No. 7, 13709-15th Ave-
nue, N. E., Seattle, Washington.

Registered No. 243401.

Return Receipt Requested.

/s/ FLORENCE M. GERGER,
Clerk Typist.

Subscribed and sworn to before me this 14th day
of February, 1950.

/s/ SUSAN A. MIZENKO,
Designated Agent, National
Labor Relations Board.

[Admitted in evidence September 6, 1950, as Gen-
eral Counsel's Exhibit No. 1-F.]

Form NLRB-508.

United States of America
National Labor Relations Board

CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS

Important—Read Carefully

Where a Charge Is Filed by a Labor Organiza-
tion or an Individual or Group Acting on Its Be-
half, a Complaint Based Upon Such Charge Will
Not Be Issued Unless the Charging Party and any
National or International Labor Organization of
Which It Is an Affiliate or Constituent Unit Have
Complied With Section 9 (f), (g), and (h) of the
National Labor Relations Act.

Instructions: File an Original and 4 Copies of
This Charge With the NLRB Regional Director
for the Region in Which the Alleged Unfair Labor
Practice Occurred or Is Occurring.

Do Not Write in This Space

Case No.: 19-CB-97

Additional Charge #1

Date Filed: 2/15/50.

Compliance Status Checked by:.....

1. Labor Organization or Its Agents Against Which Charge Is Brought:

Name: International Association of Heat and Frost Insulators and Asbestos Workers, AFL, Local No. 7.

Address: 13709-15th Avenue, N. E., Seattle, Wash.

The Above-Named Organization(s) or Its Agents Has (Have) Engaged in and Is (Are) Engaging in Unfair Labor Practices Within the Meaning of Section (8b) Subsection(s) (2) of the National Labor Relations Act, and These Unfair Labor Practices Are Unfair Labor Practices Affecting Commerce Within the Meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.):

The above-named labor organization, by its officers, agents and employees, has caused the Charles R. Brower Co. to terminate my employment in violation of Section 8 (a) (3) of the Act.

3. Name of Employer:

Charles R. Brower Co.

4. Location of Plant Involved (Street, City, and State):

114 Virginia St., Seattle, Wash.

5. Nature of Employer's Business:

Insulation Contractors

6. No. of Workers Employed:

Approx. 30

7. Full Name of Party Filing Charge:

Marvin N. Rosand

8. Address of Party Filing Charge (Street, City and State):

3037 Market St., Apt. 106, Seattle 7, Wash.

Tel. No.: HE 2070

9. Declaration

I Declare That I Have Read the Above Charge and That the Statements Therein Are True to the Best of My Knowledge and Belief.

By /s/ MARVIN N. ROSAND,

(Signature of representative or
person making charge)

Individual.

(Title or office, if any)

Date: February 16, 1950.

Wilfully False Statements on This Charge Can Be
Punished by Fine and Imprisonment (U. S.
Code, Title 18, Section 80)

Received February 23, 1950.

[Admitted in evidence September 6, 1950, as Gen-
eral Counsel's Exhibit No. 1-G.]

United States of America Before the National
Labor Relations Board, Nineteenth Region

In the Matter of:

INTERNATIONAL ASSOCIATION OF HEAT
AND FROST INSULATORS AND ASBES-
TOS WORKERS, LOCAL No. 7, AFL,

and

Case No. 19-CB-91

SIDNEY ARTHUR LENNOX (an Individual)

and

Case No. 19-CB-95

TOIVE ELMER ESKOLA (an Individual)

and

Case No. 19-CB-97

MARVIN N. ROSAND (an Individual)

and

SEATTLE CONSTRUCTION COUNCIL (and
Its Members),

Party to the Contract.

CONSOLIDATED COMPLAINT

It having been charged by Sidney Arthur Lennox, an individual, in Case No. 19-CB-91, by Toive Elmer Eskola, an individual, in Case No. 19-CB-95, and by Uhro A. Kangas, Marvin N. Rosand, an individual, in Case No. 19-CB-97, that International Association of Heat and Frost Insulators and As-

bestos Workers, Local No. 7, AFL, with headquarters in Seattle, Washington, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth in the Labor Management Relations Act of 1947, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, having previously authorized the consolidation of the three proceedings, on behalf of the National Labor Relations Board, by the Acting Regional Director for the Nineteenth Region, designated by the Board's Rules and Regulations, Series 5, as amended, Section 203.15, hereby issues this Consolidated Complaint and alleges as follows:

I.

E. E. Saberhagen, hereinafter called the Employer, is an individual doing business as Chas. R. Brower & Co., under which name he is engaged at Seattle, Washington, in the distribution and installation of insulating materials in industrial and building construction work and upon sea-going vessels.

II.

During the year 1949, the Employer made purchases of insulating materials having a value of approximately \$200,000, of which in excess of 90% originated at and was shipped to the Employer's Seattle facilities from points outside the State of Washington. During the same period, the Employer had a gross income from sales and services in excess of \$500,000, of which approximately \$70,-

000 represents income from services performed on vessels.

III.

International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, hereinafter called the Respondent, is and, at all times hereinafter mentioned, has been a labor organization within the meaning of Section 2, subsection 5, of the Act.

IV.

Seattle Construction Council, hereinafter called the Construction Council, is an association of employers engaged in the building and construction industry in the Seattle, Washington, area. One purpose for which the Construction Council was organized and exists is to represent its employer members in collective bargaining with labor organizations.

V.

The Employer is, and at all times hereinafter alleged since on or about January 1, 1942, has been, a member of the Construction Council, and at all such times has duly authorized the said Council to represent it in collective bargaining negotiations with the Seattle Building and Construction Trades Council, and to bind it to any agreement entered into with said Building Trades.

VI.

Seattle Building and Construction Trades Council, hereinafter called the Building Trades, is, and

at all times hereinafter mentioned has been, a labor organization within the meaning of Section 2, subsection 5, of the Act, having as members labor organizations with membership among employees of the building and construction industry. One purpose for which the Building Trades was organized and exists is to represent its member organizations in collective bargaining with employers in the building and construction industry.

VII.

The Respondent is, and at all times hereinafter alleged since 1939 has been, a member of the Building Trades, and at all such times, either by virtue of its membership or by specific authorization, has authorized the Building Trades to represent it in collective bargaining negotiations with employer members of the Construction Council, and to bind it to any agreement entered into with said Council.

VIII.

The Respondent has at no time been in compliance with Section 9 (f) (g) and (h) of the Act, nor has any election been conducted by the Board among the asbestos or insulation employees of the members of the Construction Council or of the Employer pursuant to Section 9, subsection (e) (1) of the Act to determine whether said employees desired to authorize the Respondent to make an agreement requiring membership in the Respondent as a condition of employment with member employers

of the Construction Council or with the Employer individually.

IX.

On or about June 30, 1943, the Construction Council entered into an agreement with the Building Trades. Said agreement set forth the wages and working conditions for the building and construction employees of the employer members of the Construction Council.

X.

By virtue of Section 9 of the contract referred to in paragraph IX, above, the members of the Construction Council, including the Employer, were, and are now, bound to employ as asbestos or insulation employees only members of the Respondent.

XI.

The agreement referred to in paragraph IX, above, has been renewed from year to year both before and after the effective date of the Act and is still in effect, and binding upon all members of the Construction Council, including the Employer, and upon all member organizations of the Building Trades, including the Respondent.

XII.

On or about January 24, 1950, the Respondent caused the Employer to refuse to employ Sidney A. Lennox on a ship-conversion job for the reason that he was not a member of the Respondent, although membership had been denied him by the Respondent, because of the Respondent's policy not

to expand its membership and not because of his failure to tender the periodic dues and the initiation fees required by the Respondent.

XIII.

On or about February 8, 1950, the Respondent caused the Employer to lay off Toive E. Eskola, Uhro Kangas, Le Roy Lucy, and Alfred J. Vollan and to refuse to reemploy them on other projects for the reason that they were not members of the Respondent, although membership had been denied them by the Respondent for the same reasons it was denied Sidney A. Lennox, as set forth and described in paragraph XII, above.

XIV.

On or about December 30, 1949, the Respondent caused the Employer to discharge Marvin N. Rosand for the reason that he was not a member of the Respondent, although membership had been denied him by the Respondent for the same reasons it was denied Sidney A. Lennox, as set forth and described in paragraph XII, above.

XV.

The union security provision referred to in paragraph X, above, and any renewal or continuation thereof, is illegal and void because it imposes conditions on employment more restrictive than those permissible under Section 8 (a) (3) of the Act, and because the Respondent has not satisfied a condition precedent of that section, namely, it has not

obtained a Board certification that a majority of the asbestos or insulation employees of the members of the Construction Council, or of the Employer alone, has authorized the Respondent to make a union security agreement.

XVI.

By being a party to the agreement referred to in paragraph IX, above, containing as it does an unlawful union security provision, as noted in paragraph X, above, at a time when such agreement was renewed subsequent to the effective date of the Act, as described in paragraph XI, above; by causing the Employer to refuse to employ Sidney A. Lennox, as set forth and described in paragraph XII above; by causing the Employer to lay off Toive E. Eskola, Uhro Kangas, Le Roy Lucy and Alfred J. Vollan and to refuse to reemploy them, as set forth and described in paragraph XIII, above; and by causing the Employer to discharge Marvin N. Rosand, as set forth and described in paragraph XIV, above; the Respondent has caused employers to discriminate, and is now causing them to discriminate, against their employees in regard to hire or tenure of employment, and to encourage membership in the Respondent in violation of Section 8 (a) (3), and has restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts and by each of them, the Respondent has engaged in, and is now engaging in, unfair labor practices within the meaning of Section 8 (b) (1) (A) and 8 (b) (2) of the Act.

XVII.

The activities of the Respondent, as set forth and described in paragraphs XI through XIV, inclusive, occurring in connection with the operations of the Employer (as described in paragraphs I and II, above) and of other employer members of the Construction Council, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states of the United States and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XVIII.

The aforesaid acts of the Respondent, as set forth and described in paragraphs XI through XIV, inclusive, constitute unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A) and 8 (b) (2) and Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 22nd day of August, 1950, issues this Consolidated Complaint against International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, the Respondent herein.

/s/ THOMAS P. GRAHAM, JR.,
Regional Director National Labor Relations Board,
Region 19.

[Admitted in evidence September 6, 1950, as General Counsel's Exhibit 1-I.]

[Title of Board and Causes.]

RESPONDENT'S MOTION TO DISMISS;
MOTION TO STRIKE, AND ANSWER

Comes now the International Association of Heat and Frost Insulators and Asbestors Workers, Local No. 7, AFL, and, Moves to Dismiss:

The complaint as not alleging any facts to constitute a violation of law;

Moves to Strike:

- (a) Paragraphs II and VIII as immaterial;
- (b) Paragraphs XV, XVI, XVII, and XVIII as being immaterial and as constituting legal conclusions.

Comes now the International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, and Answers the complaint as follows:

I.

Answering Paragraph I, the respondent has no knowledge or information thereof sufficient to form a belief, and the respondent does therefore deny the same.

II.

Answering Paragraphs II, III, IV, V, VI, VII, VIII, IX, XIII, and XIV, respondent admits the same and the whole thereof.

III.

Answering Paragraph XI, admits the same except the clause, to wit:

“* * * has been renewed from year to year both before and after the effective date of the Act * * *”

which clause is hereby denied.

IV.

The respondent having Moved to Dismiss the complaint as not alleging any facts sufficient to constitute a violation of law; and to Strike

Paragraphs II and VIII as immaterial; and

Paragraphs XV, XVI, XVII and XVIII as being immaterial, and as constituting legal conclusions;

if any of said motions are denied in whole or in part, then the respondent does deny such paragraphs as are not stricken, Except, respondent admits Paragraph II.

Respondent denies Paragraphs X, XII, XIII and XIV and the whole thereof.

Wherefore, respondent having fully Answered the complaint prays that the same be dismissed.

/s/ L. P. GILL,

Attorney for Respondent.

[Admitted in evidence September 7, 1950, as General Counsel's Exhibit No. 1-L.]

United States of America, Before the National
Labor Relations Board, Division of Trial
Examiners, Washington, D. C.

Cases Nos. 19-CB-91, 19-CB-95 and 19-CB-97

In the Matter of:

INTERNATIONAL ASSOCIATION OF HEAT
AND FROST INSULATORS AND ASBES-
TOS WORKERS, LOCAL No. 7, AFL,

and

SIDNEY ARTHUR LENNOX (an Individual),

and

TOIVE ELMER ESKOLA (an Individual),

and

UHRO A. KANGAS and MARVIN N. ROSAND
(Individuals),¹

and

SEATTLE CONSTRUCTION COUNCIL (and Its
Members),

Party to the Contract.

INTERMEDIATE REPORT

Statement of the Case

Upon charges duly filed,² the General Counsel of
the National Labor Relations Board, herein re-

¹This last individual's name was added by amend-
ment to the title of this case over the objection of
the Respondent.

²One of these charges was filed by Marvin N.
Rosand. As Rosand had filed a charge and as his
name had been omitted from the caption of the case,

ferred to as the General Counsel and the Board, respectively, by the Regional Director for the Nineteenth Region (Seattle, Washington), duly issued a consolidated complaint³ dated August 22, 1950, against International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, hereinafter referred to as the Respondent or the Union, alleging that the Respondent had engaged in unfair labor practices within the meaning of Sections 8 (b) (1) (A) and 8 (b) (2) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, hereinafter called the Act. Copies of this complaint, the charges, and the notice of hearing thereon were duly served upon the Respondent.

With respect to the unfair labor practices, the complaint alleged in substance that the Respondent (1) by being a party to an agreement containing an illegal union-security clause, and (2) by causing E. E. Saberhagen, doing business as Chas. R. Brower & Co., to lay off and to refuse to re-employ six named individuals, has restrained and coerced the employees in the exercise of the rights guaranteed in Section 7 of the Act and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) and 8 (b) (2) of the Act.

although mentioned in the body of the complaint as one of those discriminatorily discharged, the General Counsel moved to amend the caption to correct that omission.

³By appropriate order these cases were all consolidated for hearing.

The Respondent filed its answer admitting certain allegations of the complaint but denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held in Seattle, Washington, on September 6, 1950, before the undersigned Trial Examiner duly appointed by the Chief Trial Examiner. All parties were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues involved. At the commencement of the hearing the Respondent moved to dismiss the complaint on the ground that the business of the Company was of essentially a local nature and that, therefore, the Board did not have jurisdiction. This motion was denied. The Respondent's subsequent motion to strike various allegations from the complaint was also denied. All parties waived oral argument at the conclusion of the hearing, but briefs have been received from the General Counsel and the Respondent.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following

Findings of Fact

I. The Business of the Company

E. E. Saberhagen is an individual doing business as Chas. R. Brower & Co. and is engaged in Seattle, Washington, in the distribution and installation of insulating materials in industrial and building con-

struction and upon seagoing vessels. During its 1949 fiscal year this Company did installation work on vessels belonging to the Army Transport Service, Luckenbach Steamship Company, Northland Transportation Company, and other similar concerns, all of which are engaged in interstate commerce. Most, if not all, of the work done by this Company on seagoing vessels was performed at various shipyards located in and around the State of Washington. It also installed insulation work for various Seattle, Washington, and Portland, Oregon, plumbers and steamfitters in industrial and building construction work. During the year 1949, it purchased goods and materials from outside the State of Washington valued at approximately \$200,000 and received a gross income from its installation work in excess of \$500,000, of which approximately \$60,000 was for materials furnished and services rendered on seagoing vessels, 90 per cent of which moved in interstate commerce. For the year 1950, income received by said Company for this latter type of work was slightly less than it had been for the year 1949.

This Company is a member of, and bound by the labor agreements negotiated by, Seattle Construction Council, a group acting collectively and severally for all of its members who are employers of craftsmen and labor.

The undersigned finds that the Company is engaged in operations affecting commerce among the several States.

II. The Respondent

International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, is a labor organization admitting to membership employees of the Company and is a member of the Seattle, Washington, Building and Construction Council and bound by the labor agreements negotiated for and on its behalf by that body.

III. The Unfair Labor Practices

On June 30, 1943, the Seattle Construction Council acting collectively and severally for all its members, employers of craftsmen and labor, of which Brower & Co. was a member, entered into an agreement with Seattle, Washington, Building and Construction Trades Council acting collectively and severally for all its members, of which the Respondent was one. This agreement contained an escalator wage clause by which wages were to be determined for the period from January 1, 1944, to January 1, 1947.

Paragraph 9 (a) of that agreement provided as follows:

It is further agreed that all members of the Party of the First Part hiring employees will employ none other than members of the Party of the Second Part, as enumerated in Schedule "A" attached hereto, entitled Wage Schedule.

Included in the Schedule "A" mentioned above was the work classification of "asbestos workers," i.e., the group represented by the Respondent here.

The termination clauses of the contract are two-fold: (1) That applicable to the escalator wage clause, which reads as follows:

Paragraph 4 of this contract shall remain in effect until January 1, 1948, unless notice is given 90 days prior to July 1, 1947, and shall renew itself from year to year thereafter. Provided that wages shall be adjusted from time to time as provided for in Paragraph 4.

and (2) that pertaining to the other conditions included in the contract, which read as follows:

All other conditions of this Agreement shall take effect on July 1, 1943, and continue in effect thereafter from year to year until changed by the mutual agreement of the parties as provided herein. Proposed changes or modification of this Agreement shall be made by either party giving notice thereof in writing to the other party at least 90 days before July 1, and such notice shall specify the provisions desired to be changed and shall state the time and place at which negotiations may commence. The other party shall enter into negotiations not later than 30 days from the date of the receipt of said notice, after party has notified the other in writing of proposed modifications and changes in the Agreement. In the event no accord can be reached in the succeeding 60 days, arbitration as provided hereinafter shall be resorted to.

The arbitration therein referred to reads as follows:

It Is Further Agreed by both parties hereto that all disputes and grievances that cannot be speedily and amicably adjusted on the work shall be submitted to the accredited agents of the parties hereto, and if not adjusted by them shall be submitted to the Adjustment Board, whose decision shall be submitted in writing and be final and binding upon both parties. Pending such decision there shall be no strike or lockout, except that where non-union men are employed the Party of the Second Part reserves the right to remove all Union men from the job. In the event the Adjustment Board shall be unable to reach an agreement, the U. S. Department of Conciliation shall be given the opportunity to adjust the difficulty in a manner acceptable to both parties signatory hereto. If such adjustment cannot be reached, both parties and the U. S. Department of Conciliation shall each appoint an umpire and their decision shall be final and binding upon both parties. The umpire appointed by the U. S. Department of Conciliation to be satisfactory to both parties hereto.

Furthermore, it was agreed by all parties that the aforementioned contract remains in full force and effect without modification of any sort to the present date. At the hearing the Respondent suggested that the illegal closed-shop provisions of this con-

tract were not enforced on jobs coming within the jurisdiction of the Board. This contention will be referred to hereinafter.

At all times material herein the Respondent has had, and now has, a membership of approximately 41 persons, who will be referred to herein as "card men." During the war years as many as 350 men were granted permits to work by the Respondent. These men will be hereinafter referred to as "permit men." In addition, the Union permitted "travelers," i.e., card men from other locals of the same International Union, to work in the Seattle area. Since the end of hostilities, as ship construction and repair work has dropped off, the number of permit men has diminished accordingly. This hearing deals with the last of the permit men.

Like much other construction work the insulation jobs, installation or repair, are jobs of short duration, so that the employees work on numerous small jobs lasting but a few days at a time. As these jobs come up, the contractors call the Union for men to do such work and the Union dispatches men as requested. Generally all the asbestos workers are dispatched by the Union upon request from the Employer, although it is also permissible for the men to locate the job and then to secure clearance from the Union before starting work for the contractor involved. The contractors always require clearance from the Union before giving the man employment.

When shipbuilding and ship repair became such an important occupation in the Seattle area during

the war, there was such a shortage of insulation workmen that the Respondent approached other AFL locals in the vicinity seeking volunteers to help carry the work load. From such sources the Respondent recruited Sidney Arthur Lennox, Toive E. Eskola, Uhro A. Kangas, Alfred J. Vollan, LeRoy D. Lucy, and Marvin N. Rosand, all members of other AFL craft unions in the Seattle area, and allowed them to work as asbestos workers under permit from the Respondent. All of these men began their insulation work between the years 1940-43, and all have made their livelihood from it ever since as they only return to their original craft when there is no insulation work to be done, a definite minority of the time. From that time until September, 1949, or February, 1950, as the case might be, each of these men worked under permit from the Respondent, paying the dues required by the Respondent either directly to the Respondent or to the business agent of the local to which each belonged as the arrangement between the Respondent and that other local at the time might require. Up until the date above mentioned these men were dispatched by the business agent of the Respondent in the exact manner as was done with all the other asbestos workers, including the card men. All have paid the required dues at all times and none have worked without clearance from the Respondent.

Three of the men, Lennox, Eskola, and Kangas, made application on one or more occasions between 1947 and 1949 for membership in the Respondent. Each of these applications was rejected by the Re-

spondent. It developed at the hearing that the Respondent had accepted only two new members in the past year and a half or two years. Gagner, business agent of the Respondent, testified that the applications were rejected because the men "were not qualified." It is known, however, that none of these applications was rejected because the applicant lacked the necessary craft skill for membership, as the business agent admitted that none of the applicants had ever been referred to the examining board of the Respondent, which board passes upon the work qualifications of the various applicants. These applicants were blackballed at a general meeting of the membership for the same considerations as are applicable to any fraternal or social organization. None of the other three permit men here involved have applied for membership in the Respondent.⁴

Arthur Lennox performed his last work in the insulation trade in September, 1949. At that time he was laid off at the completion of a job. He heard a rumor that the permit men were not to be allowed to work any more in the industry. Sometime in January, 1950, he spoke to Ben Bradley, superintendent of Chas. R. Brower & Co., about getting a job, and was told by Bradley that there was a job

⁴The business agent candidly testified that "we have built up this trade and must maintain it. * * * It isn't the employer's trade." He also testified that of late years "the pickings" have been "pretty slim" as the work on the waterfront has run approximately one-half a man per day.

for him if he could secure clearance from the Union. When Lennox called Business Agent Gagner, Gagner refused to issue him a permit. Two weeks thereafter Bradley again told Lennox about a certain job he could have if the Union would clear him. At the request of Lennox, Bradley called Gagner and asked that Lennox be assigned to this particular job. Gagner refused Bradley's request. In another telephone conversation at this time Gagner told Lennox that there was no work for permit men as the Respondent was bringing travelers in from Portland and Bellingham. Thus Lennox has been unable to secure employment in the industry where he had earned his livelihood since 1942.

On December 24, 1949, Marvin Rosand was employed on a job for Brower & Co. The business agent of the Respondent telephoned Bradley and said that Rosand was to be replaced by a card man. In accordance with these instructions Bradley laid off Rosand and replaced him thereafter with a card man. Rosand, having heard also that the Respondent was not going to issue permits any longer, has never asked for a job since and has never been assigned by Respondent to any jobs in the industry. He has returned to his former occupation as a pile driver man.

On February 8, 1950, Eskola, Kangas, Vollan, and Lucy were all employed by Brower & Co. on an insulation job that that Company was installing on the USS Freeman, an Army transport ship. When the Company decided to reduce its staff on that job,

Superintendent Bradley telephoned to Business Agent Gagner, informed him of the impending lay-off, and asked him how it should be done. Gagner told him that the permit men should be laid off first. The following day all the permit men were laid off, although some of the card men who remained at work had less seniority on the job. This has been the usual practice in the event of layoff. At the time of this layoff Bradley told some of these men that the business agent of the Respondent had requested that the permit men be laid off.

Since that date no permit men have been assigned work in the insulation field in the Seattle area by the Respondent. In fact, Gagner assured two of the permit men who requested a clearance for various jobs that he would not issue any more permits. He has kept his word.

Conclusions

Obviously the contract involved here is illegal under the terms of the Taft-Hartley Act because the contract provisions create closed-shop conditions whereby employment is conditioned upon union membership and, in addition, because, as admitted in the pleadings, no election as required by Section 9 (e) of the Act has been held authorizing the Union to bargain for any union-security provisions.

The Respondent does not contest this, but argues that the provisions of the Taft-Hartley Act do not make this contract illegal for two reasons: (1) The restrictive provisions of the contract have not been applied to jobs affecting commerce, and (2) because

the Taft-Hartley Act does not apply to this contract which was executed in 1943 and has remained in full force and effect at all times subsequent thereto without change and hence has not been "renewed or extended" since the amendment of the Wagner Act, and thus is legal under the terms of Section 102 of the Act, as amended.

In view of the fact that the terms of this contract have been fully applied and enforced to insulation jobs being performed on ocean-going vessels as exemplified in the cases of each of the six individuals here involved, the Respondent's original contention is not only inaccurate but, also, without merit.

The Respondent's second contention, however, depends upon the interpretation to be made of Section 102 of the Act, which reads as follows:

No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act which did not constitute an unfair labor practice prior thereto, and the provisions of Section 8 (a) (3) and Section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation

would not have constituted an unfair labor practice under Section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

In view of the phraseology used in the contract in the instant proceeding:

All other conditions of this Agreement shall take effect on July 1, 1943, and continue in effect thereafter from year to year until changed by mutual agreement of the parties as provided herein, * * *

together with the customary 90-day notice of proposed changes, and in view of the phraseology used in the contract regarding the wage provisions thereof:

Paragraph 4 of this contract shall remain in effect until January 1, 1948, unless notice is given 90 days prior to July 1, 1947, and shall renew itself from year to year thereafter, * * *

it would appear that this contract from at least on and after July 1, 1948, became a contract of 1-year duration, automatically renewing itself with the consent of the parties upon their failure to file a request for changes in accordance with the provisions thereof. Thus on its face the contract here was renewed or extended as of July 1, 1948, and has been renewed or extended subsequent thereto.⁵

⁵Clara-Val Packing Company, 87 NLRB No. 120; Salant & Salant, Inc., 88 NLRB No. 156, and Acme-Evans Company, Inc., 90 NLRB No. 293.

The action of the parties in remaining inactive at the 90-day period constituted their mutual agreement to "extend or renew" the contract for another year.

However, the Respondent argues that the cases cited for the proposition above are inapplicable here for the reason that this contract provides for arbitration in the event that the parties to the contract should be unable to agree upon the requested changes in conditions of employment after 60 days of negotiations, that this arbitration decision is final and binding on both parties and, therefore, the contract here is made perpetual by reasons of its arbitration features, while in the cases above cited there were no similar arbitration features and thus automatically ceased to exist at the end of the anniversary period in the event of an unsettled state of negotiations. Unfortunately for the Respondent's contention here there is no such arbitration feature connected with the escalator wage scale provisions of the present contract, although changes could be demanded therein by notice given 90 days prior to the date of July 1. Thus, an essential feature of this contract would expire in the event of an unsettled dispute over changes therein.

The undersigned, therefore, concludes and finds that on and after July 1, 1947, the contract at issue here became a contract of 1-year duration, automatically renewable on its anniversary date under certain conditions and, thus, this contract has also been "renewed or extended" subsequent to the passage of the Taft-Hartley bill.

There remains but one other contention made by the Respondent, which is that the Union did not insist or cause the layoff or refusal to employ the individuals here involved, and that the Company itself was solely responsible for those acts. This contention is based upon a conflict of testimony created by Gagner's denial that he required or caused the Company to discharge the men involved here. This conflict the undersigned has been forced to resolve in accordance with the testimony of the superintendent of Brower & Co., corroborated by the testimony of the six individuals as against the testimony of Gagner and his fellow business agent, Kinsman. The subsequent facts disprove the testimony of the two officials of the Respondent Union. The men have not been re-employed solely because the Respondent refused to clear the men to the Employer, who was not free under the terms of the agreement to employ such non-members without such Union clearance.

The Respondent's business agents also contended that, when the six individuals called them for jobs, there were no jobs available to which they could have been assigned. This testimony does not jibe with the testimony of Superintendent Bradley, who testified that his Company practically at all times has had an order for men with the Union and that a good part of the time the Union was unable to furnish the requested employees. In view of the increase in ship construction and repair, the undersigned accepts the testimony of Superintendent Bradley.

The undersigned, therefore, concludes and finds that the Respondent by its officials caused the Company to discriminate in regard to the hire and/or tenure of employment of Sidney A. Lennox, Toive E. Eskola, Uhro A. Kangas, Alfred Vollan, LeRoy Lucy, and Marvin N. Rosand, in order to encourage membership in the Respondent and because membership in that organization had been denied to the above-named individuals for reasons other than the failure to tender the periodic dues and initiation fees or because of the fact that said individuals were not members of the Respondent Union.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Company described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to bring about labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondent has engaged in and is now engaging in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent by requiring the enforcement of a contract containing an

illegal union-security provision, by refusing to issue work permits to non-members of the Union, and by causing the Employer to discriminate in regard to the hire and tenure of employment of persons who were not members of the Union or who had been refused Union membership for reasons other than the failure to tender the periodic dues and initiation fees, has committed unfair labor practices, and is now committing unfair labor practices in violation of Section 8 (b) (2). The undersigned will, therefore, recommend that the Respondent cease and desist from such practices and notify Seattle Construction Council (and its members) and Chas. R. Brower & Co., in writing that it no longer considers the union-security clause of its agreement with them to be in effect or binding upon the parties. As the other provisions of said contract have apparently been satisfactory for many years to all parties concerned, including the individuals here involved, the undersigned believes that it would lead to instability in otherwise harmonious labor relations to require that the whole contract be set aside and, therefore, will limit this requirement to the elimination of the illegal clauses therein.

By the same aforementioned act, the Respondent has also restrained and coerced employees in the exercise of the rights guaranteed to them in Section 7 of the Act in violation of Section 8 (b) (1) (A) of the Act. The undersigned will also order the Respondent to cease and desist therefrom. See *Clara-Val Packing Company*, 87 NLRB No. 120.

As the Respondent has, by the aforementioned

acts, deprived the above-named individuals from gainful employment, the undersigned will order the Respondent to make each of the individuals whole for any loss of pay which each may have suffered by reason of the Respondent's unfair labor practices from the date of the discrimination against him to the date of the compliance of the Respondent with this recommendation. This loss of pay shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB No. 41.

Upon the basis of the above findings of fact and upon the entire record in this case, the undersigned makes the following

Conclusions of Law

1. International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By requiring the enforcement of a contract containing illegal union-security provisions, by refusing to issue work permits to non-members of the Union, and by causing the employers to discriminate in regard to the hire and tenure of employment of persons who were not members of the Union or who had been refused membership in said Union for reasons other than their failure to tender the periodic dues and initiation fees, the Respondent violated Section 8 (b) (2) of the Act.

3. By the aforementioned acts the Respondent restrained and coerced employees in the exercise

of the rights guaranteed in Section 7 of the Act, thereby violating Section 8 (b) (1) (A) of the Act.

4. The aforementioned unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, the undersigned recommends that: the Respondent Union, International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Requiring the enforcement of the contract containing illegal union-security provisions, refusing to issue work permits to non-members of the Union, and causing Seattle Construction Council (and its members) and Chas. R. Brower & Co., to discriminate in regard to the hire and tenure of employment of persons who are not members of the Union or who have been refused membership in said Union for reasons other than their failure to tender the periodic dues and initiation fees in violation of Section 8 (b) (2) of the Act;

(b) Restraining or coercing employees or prospective employees in the exercise of their right to refrain from any and all concerted activities listed in Section 7 of the Act except to the extent that

such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Notify Seattle Construction Council (and its members) and Chas. R. Brower & Co., that it no longer considers the union-security provisions of the contract between it and said Council and Brower & Co. to be in effect or binding upon the parties;

(b) Notify Seattle Construction Council (and its members) and Chas. R. Brower & Co., in writing, and furnish copies of said notice to the individuals involved, that it withdraws its objections to the employment of Sidney A. Lennox, Toive E. Eskola, Uhro A. Kangas, Alfred Vollan, LeRoy Lucy, and Marvin N. Rosand, and that it has no objections to the employment of said individuals;

(c) Make whole the said Sidney A. Lennox, Toive E. Eskola, Uhro A. Kangas, Alfred Vollan, LeRoy Lucy, and Marvin N. Rosand for any loss of pay he may have suffered by reason of the Respondent's discrimination against him, in the manner provided herein in the section entitled "The Remedy";

(d) Post immediately in its business office and wherever notices to its members are customarily posted, copies of the notice attached hereto marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region,

shall, after being duly signed by an official representative of the Respondent Union, be posted by it immediately upon receipt thereof and be maintained for a period of at least sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Nineteenth Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps it has taken to comply herewith.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. State-

ments of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Signed at Washington, D. C., this 18th day of October, 1950.

/s/ THOMAS S. WILSON,
Trial Examiner.

Appendix A

Notice

To All Members of International Brotherhood of
Heat and Frost Insulators and Asbestos Work-
ers Union, Local No. 7, AFL,

Pursuant to

The Recommendations of a Trial Examiner
of the National Labor Relations Board, and in order
to effectuate the policies of the National Labor Re-
lations Act, we hereby notify you that:

We Have notified Seattle Construction Council
(and its members) and Chas. R. Brower & Co., that
the union-security provisions contained in our con-
tract with them is no longer binding and of any
effect and that they are free to employ the following
individuals:

Sidney A. Lennox

Toive E. Eskola

Uhro A. Kangas

Alfred Vollan

LeRoy Lucy

Marvin N. Rosand

and that this Union will grant work permits to said
individuals.

We Will make whole the above-named individuals
for any loss of pay suffered because of the discrimi-
nation against each of them.

We Will Not restrain or coerce employees or
prospective employees of Seattle Construction
Council (and its members) and Chas. R. Brower

& Co., or any other employer in the exercise of their right to refrain from engaging in concerted activities as guaranteed them by Section 7 of the Act except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

We Will Not in any manner cause or attempt to cause Seattle Construction Council (and its members) and Chas. R. Brower & Co., or any other employers to discriminate against any employee or prospective employee in violation of Section 8 (a) (3) of the Act.

INTERNATIONAL BROTHERHOOD OF HEAT
AND FROST INSULATORS AND ASBESTOS
WORKERS UNION, LOCAL No. 7,
AFL,

(Union)

By,

(Representative) (Title)

Dated

This notice must remain posted for 60 days from the date of posting, and must not be altered, defaced, or covered by any other material.

United States of America, Before the
National Labor Relations Board

Cases Nos. 19-CB-91, 19-CB-95 and 19-CB-97

In the Matter of:

INTERNATIONAL ASSOCIATION OF HEAT
AND FROST INSULATORS AND ASBES-
TOS WORKERS, LOCAL No. 7, AFL,

and

SIDNEY ARTHUR LENNOX (an Individual),

and

TOIVE ELMER ESKOLA (an Individual),

and

UHRO A. KANGAS and MARVIN N. ROSAND
(Individuals),

and

SEATTLE CONSTRUCTION COUNCIL (and Its
Members),

Party to the Contract.

DECISION AND ORDER

On October 18, 1950, Trial Examiner Thomas S. Wilson issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed

exceptions to the Intermediate Report and a supporting brief. The Respondent also requested oral argument. That request is hereby denied, as the record, including the brief and exceptions, in our opinion, adequately presents the issues and the positions of the parties.

The Board¹ has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications:

1. The Trial Examiner found, and we agree, that the Respondent, a labor organization, refused to issue work permits to the six individuals named in the complaint and, pursuant to illegal union-security provisions in a contract, dated June 30, 1943, required Chas. R. Brower & Co., an employer, to lay off or refuse to hire, as the case may be, the six individuals because they did not have such work permits, in violation of Section 8 (b) (2) and 8 (b) (1) (A) of the Act. The Respondent contended that the contract, entered into before the effective date of the 1947 amendments, was not renewed thereafter and that the validity of the contract was thus preserved by Section 102 of the Act. In making

¹Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

this contention, the Respondent urges that certain so-called arbitration provisions of the contract make it one of perpetual duration and thus this case is distinguishable from others in which the Board has held that a contract was renewed within the meaning of Section 102. In rejecting this contention, the Trial Examiner construed the contract so as to make the so-called arbitration provisions inapplicable to Paragraph 4 of the contract which provides that its wage provisions "shall remain in effect until January 1, 1948, unless notice is given 90 days prior to July 1, 1947, and shall renew itself from year to year thereafter * * *." We do not so construe the contract. However, we agree with the Trial Examiner that the contract was renewed after the effective date of the amended Act, and before the unfair labor practices of the Respondent occurred, within the meaning of Section 102. We have held in the cases cited by the Trial Examiner that a renewal of a contract resulted from the operation of an automatic renewal clause, contained in the contract, which provided that unless notice was given by one of the parties within a prescribed time, the contract was to bind the parties for an additional stated period. The contract in the instant case, in addition to the provisions quoted above, further provides that "* * * All other provisions of this Agreement shall take effect on July 1, 1943, and continue in effect thereafter from year to year until changed by the mutual agreement of the parties as provided herein * * *." The contract also provides in substance that notice of proposed changes may be given

by either party not less than 90 days before any July 1 and, if negotiations as to the proposals fail, resort be had to arbitration, which shall be final and binding (the so-called arbitration provisions). For present purposes, we perceive no vital distinction between a contract containing such clauses and those found in the cases cited by the Trial Examiner.

2. The Trial Examiner recommended that the Respondent be required to make each of the six individuals whole for any loss of pay which each may have suffered by reason of the Respondent's unfair labor practices from the date of the discrimination against each of the discriminatees to the date of the Respondent's compliance with "this recommendation." In accordance with our usual practice in similar cases,² we shall require the Respondent (1) to pay to each of the six discriminatees a sum of money equal to the amount that he normally would have earned as wages during the period from the date of discrimination against him to 5 days after the date on which the Respondent notifies, in writing, the Employer, Chas. R. Brower & Co., that the Respondent no longer has objection to his immediate employment, less his net earnings during such period, as computed on the basis of each separate calendar quarter or portion

²See, for example, Pinkerton's National Detective Agency, Inc., 90 NLRB No. 39; Pen and Pencil Workers Union, Local 19593, AFL (Wilhelmina Becker), 91 NLRB No. 155.

thereof during this period, and less such other sums as the Employer, absent the discrimination, would normally have deducted from his wages for deposit with State and Federal agencies on account of social security and other similar benefits; and (2) to pay to the appropriate State and Federal agencies, to the credit of the six discriminatees and the Employer, a sum of money equal to the amount which, absent the discrimination, would have been deposited to such credit by the Employer, either as a tax upon the Employer or on account of deductions made from the six discriminatees' wages by the Employer, on account of such social security and other similar benefits.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, its officers, representatives, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Requiring the enforcement of its existing contract with Seattle Construction Council containing illegal union-security provisions and causing Seattle Construction Council and its members, including Chas. R. Brower & Co., to discriminate in regard to the hire and tenure of employment of

persons who are not members of the Union or who have been refused membership in said Union for reasons other than their failure to tender the periodic dues and initiation fees, in violation of Section 8 (b) (2) of the Act;

(b) Restraining or coercing employees or prospective employees in the exercise of their right to refrain from any and all concerted activities listed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Notify Seattle Construction Council and its members, including Chas. R. Brower & Co., that it no longer considers the union-security provisions of the contract between it and said Council to be in effect or binding upon the parties;

(b) Notify Seattle Construction Council and its members, including Chas. R. Brower & Co., in writing, and furnish copies of said notice to the individuals involved, that it withdraws its objections to the employment of Sidney A. Lennox, Toive E. Eskola, Uhro A. Kangas, Alfred Vollan, LeRoy Lucy, and Marvin N. Rosand, and that it has no objection to the employment of said individuals;

(c) Make whole the said Sidney A. Lennox, Toive E. Eskola, Uhro A. Kangas, Alfred Vollan,

LeRoy Lucy, and Marvin N. Rosand for any loss of pay that each may have suffered by reason of the Respondent's discrimination against him, in the manner provided herein and in the section of the Intermediate Report entitled "The Remedy";

(d) Post immediately in its business office and wherever notices to its members are customarily posted, copies of the notice attached hereto marked Appendix A.³ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by an official representative of the Respondent Union, be posted by it immediately upon receipt thereof and be maintained for a period of at least sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Nineteenth Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

³In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order" on this notice the words "A Decree of the United States Court of Appeals Enforcing."

Signed at Washington, D. C., this 15th day of December, 1950.

JOHN M. HOUSTON,
Member;

JAMES J. REYNOLDS, JR.,
Member;

PAUL L. STYLES,
Member;

[Seal]

NATIONAL LABOR
RELATIONS BOARD.

Appendix A

Notice

To All Members of International Brotherhood of Heat and Frost Insulators and Asbestos Workers Union, Local No. 7, AFL:

Pursuant to
A Decision and Order
of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

We Have notified Seattle Construction Council and its members, including Chas. R. Brower & Co., that the union-security provisions contained in our contract with them are no longer binding and of any effect and that they are free to employ the following individuals:

Sidney A. Lennox

Toive E. Eskola

Uhro A. Kangas

Alfred Vollan

LeRoy Lucy

Marvin N. Rosand

We Will make whole the above-named individuals for any loss of pay suffered because of the discrimination against each of them.

We Will Not restrain or coerce employees or prospective employees of employer members of Seattle Construction Council, including Chas. R. Brower & Co., or any other employer, in the exercise of their right to refrain from engaging in concerted activities as guaranteed them by Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

We Will Not in any manner cause or attempt to cause Seattle Construction Council and its members, including Chas. R. Brower & Co., or any other employer, to discriminate against any employee or prospective employee in violation of the Act.

INTERNATIONAL BROTHERHOOD OF HEAT
AND FROST INSULATORS AND ASBESTOS
WORKERS UNION, LOCAL No. 7,
AFL,

(Union)

By

(Representative) (Title)

Dated

This notice must remain posted for 60 days from the date of posting, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

PETITION FOR RECONSIDERATION AND
PETITION TO RE-OPEN RECORD

Comes Now the International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, Respondent, and respectfully moves the National Labor Relations Board to

Reconsider its "Decision and Order" issued herein on December 15, 1950; and to

Direct the re-opening of the record herein for the purpose of receiving additional testimony from the Respondent of facts transpiring subsequent to October 18, 1950, to wit:

the Respondent abandoned the so-called "permit system"; did notify all of their employers thereof, and all of the employers have since said time hired their employees without any requirement that they join, belong to or secure "permits from the Respondent"; that the Seattle Construction Council and the Chas. R. Brower & Co. knew of said facts during all of said times; that during all of said times there was no requirement that

Sidney A. Lennox

Toive E. Eskola

Uhro A. Kangas

Alfred Vollan

LeRoy Lucy

Marvin N. Rosand

be a member or, join or secure a "permit" from the Respondent in order to be employed by the Chas. R. Brower & Co. or any other employer as an insulation employee or at any other type of work;

and other testimony relating to the same subject; with a right of cross-examination to the General Counsel.

In making this statement, the Respondent does not state that there had been any restrictions prior to said time; but states that these additional facts are further proof of the position of the Respondent that it has at no time maintained a "permit" requirement against said persons. Respondent understands that the Board has ruled unfavorably on this subject, but Respondent Asserts that the additional facts renders moot several of items of affirmative action that the Board requires and makes necessary an amendment to the rule for computing the loss of pay. The requirement for giving of Notice and Posting is made useless, and the requirement for compensating for loss of pay presumes the use of a date subsequent to December 18, 1950, (the date when the Decision and Order was re-

ceived) while the additional Facts require the use of a retroactive date.

Respondent refers to its Objections to the Intermediate Report and incorporates the same herein. Respondent requests that the Board reconsider its Decision and Order on the basis of these Objections and dismiss the Complaint.

Copies of this document will be simultaneously served on all parties.

Dated this 22nd day of December, 1950.

/s/ L. PRESLEY GILL,
Attorney for Respondent.

Received December 26, 1950.

[Title of Board and Cause.]

ORDER DENYING PETITION AND MOTION

On December 15, 1950, the Board issued a Decision and Order in the above-entitled proceeding on December 26, 1950, counsel for the Respondent filed a "Petition for Reconsideration and Petition to Re-open Record"; and thereafter on January 2, 1951, counsel for the General Counsel filed a "Motion for Reconsideration of Board Remedy and Order and Reply to Respondent's Petition for Reconsideration and Petition to Re-open Record," and the Board having duly considered the matter,

It Is Hereby Ordered that the "Petition for Reconsideration and Petition to Re-open Record"

be, and it hereby is, denied for the reason that the aforesaid Petition presents no material issue not previously considered and for the reason that the testimony sought to be adduced is not material or relevant to the issues in the case; and

It Is Further Ordered that the Motion for Reconsideration of the Board's Remedy and Order be, and it hereby is, denied for the reason that it would not effectuate the policies of the Act to modify the Board's Order as requested.

Dated, Washington, D. C., January 17, 1951.

By decision of the Board:

/s/ FRANK M. KLEILER,
Executive Secretary.

Before the National Labor Relations Board
Nineteenth Region

Cases Nos. 19-CB-91, 19-CB-95, and 19-CB-97

In the Matter of:

INTERNATIONAL ASSOCIATION OF HEAT
AND FROST INSULATORS AND ASBES-
TOS WORKERS, LOCAL No. 7, AFL,

and

SIDNEY ARTHUR LENNOX (An Individual)

and

TOIVE ELMER ESKOLA (An Individual),

and

MARVIN N. ROSAND (An Individual),

and

SEATTLE CONSTRUCTION COUNCIL (and
Its Members),

Party to the Contract.

PROCEEDINGS

Wednesday, September 6, 1950

Pursuant to notice, the above-entitled matter
came on for hearing at 10:00 o'clock a.m.

Before: Thomas S. Wilson, Esq.,
Trial Examiner.

Appearances:

ROBERT E. TILLMAN, ESQ.,
Appearing on Behalf of the
National Labor Relations Board.

L. PRESLEY GILL, ESQ.,
Appearing on Behalf of the International
Association of Heat and Frost Insulators
and Asbestos Workers, Local No. 7,
AFL, the Respondent.

OLIVER GAGNER, Secretary,
Appearing on Behalf of International As-
sociation of Heat and Frost Insulators
and Asbestos Workers, Local No. 7,
AFL, the Respondent. [2*]

* * *

Mr. Tillman: In connection with the original Charge in 19-CB-97, which I mentioned was inadvertently not attached to the Complaint, it was also not—I might say the Complaint also was not in conformity with the original Charge insofar as the caption fails to set forth the name of the charging party. Therefore, I would move to amend the caption of the case, on the line where appears the name, Marvin N. Rosand, by adding before that name the words, "Uhro A. Kangas," and making it read then on that line, "Uhro A. Kangas and Marvin N. Rosand."

Then, I also move to substitute for the words on

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

that same line, "an individual" the word "individuals." [8]

* * *

Mr. Tillman: Then in the opening paragraph, line 3, I would move to make the same changes as I made in the caption by inserting before the name, Marvin N. Rosand, the name Uhro A. Kangas; then, changing the words "an individual" to read "individuals." Those are all the motions. [9]

* * *

Trial Examiner Wilson: Let me get this straight, Mr. Tillman. Under this Complaint who is the General Counsel considering to be the so-called eight individuals, besides these three?

Mr. Tillman: Six individuals—Sidney A. Lennox as set forth in paragraph 12; Toive E. Eskola, Uhro A. Kangas, LeRoy Lucy and Alfred J. Vollan in paragraph 13, and in paragraph 14, Marvin N. Rosand.

Trial Examiner Wilson: They are all mentioned in the [10] Complaint?

Mr. Tillman: That is right.

* * *

Trial Examiner Wilson: And you contend you are surprised, Mr. Gill?

Mr. Gill: Surprised on this basis. We have a Motion to Strike the three, and it is basically sound, legally, that any proof of discrimination against Kangas would not be proof of discrimination on the issues of the case as to Vollan and Rosand, and the Charge I have here next to our copy, the service

copy for Rosand, doesn't mention Kangas in any way in the Charge. We have had no notice of the Charge as to proceeding to a hearing on Kangas except just a moment ago.

Trial Examiner Wilson: You mean to tell me you are not prepared to go ahead and defend the case against Kangas?

Mr. Gill: If you will grant a recess—if that is the basis of your line of thinking—I will inquire of my people. If it is possible that I can have a short recess and make inquiry. I want to be fair about it on that issue.

Trial Examiner Wilson: Well, Mr. Gill, as the names are all mentioned here in various and sundry paragraphs, including Paragraph 16, I am not quite prepared to see how you have been taken by surprise. I will deny this motion, Mr. Gill. Do you want to be heard on your motion to strike and your motion to dismiss? [11]

* * *

ELLIOTT DeFOREST

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tillman:

* * *

Q. And, Mr. DeForest, what is your occupation?

A. I am Assistant Manager of Charles R. Brower & Co. [18]

* * *

(Testimony of Elliott DeForest.)

Q. Who is the owner?

A. Saberhagen—S-a-b-e-r-h-a-g-e-n.

Q. Where is the location of the company?

A. 114 Virginia Street, Seattle.

Q. And the nature of the business?

A. Insulation contractors.

Q. As insulation contractors what sort of work does the company do?

A. It performs contracts on new construction and on vessels in shipyards.

* * *

Q. Over the years has there been any valuation placed upon the manufacturing part of the company?

A. I don't know whether I could segregate it now.

Q. What sort of buildings does the company put insulation work in?

A. Well, buildings of all types—public buildings, hospitals, schools, apartments.

Q. And what type of vessels?

A. Any type of vessels that are repaired in these waters. The work is generally done in the shipyards. [19]

Q. Well, could you be more explicit and indicate what types of vessels use insulation or at least what types you put insulation in?

* * *

A. Well, vessels of the Military Transport Service, for instance; Luckenback Steamship Company,

(Testimony of Elliott DeForest.)

the Northland Transportation Company here under discussion.

Trial Examiner Wilson: The Northland Steamship Company running between Seattle and Alaska?

The Witness: Seattle and Alaska.

Q. * * * What proportion of the vessels that you work on from a monetary standpoint are vessels that are engaged in going overseas from one point in the State of Washington to a point elsewhere?

A. Oh, I would estimate that perhaps 90 per cent of them are off-shore vessels, because the small vessels require a very small amount of this type of insulation.

Q. Has the amount of work done on vessels changed any since the year 1949 down to the present time?

A. Well, I believe the amount of work on vessels in 1950 has been less than in 1949. [20]

* * *

Q. (By Mr. Tillman): I will ask you to merely indicate the [21] shipyards from whom the company received its income during the fiscal year. If you like you can merely total it up and give us the total.

A. I find here a total of \$60,000 for the shipyards.

Q. All right. In the Complaint we have alleged the year 1949 as showing that the company had a gross income in excess of \$500,000. How does that

(Testimony of Elliott DeForest.)

figure compare with your gross income for your last fiscal year? Was it in excess of \$500,000?

A. The income for the last fiscal year was in excess of \$500,000.

* * *

Mr. Tillman: I think that is all the questions.

Trial Examiner Wilson: Before Mr. Gill starts, could you give us an estimate of the amount of work done on vessels for the year 1950? [22]

* * *

The Witness: This present fiscal year—\$60,000.

Trial Examiner Wilson: \$60,000. Thank you. And you estimate that 90 per cent of that is done on seagoing vessels?

The Witness: On seagoing vessels.

Trial Examiner Wilson: All right. Mr. Gill?

Cross-Examination

By Mr. Gill:

Q. Within the last fiscal year, which ended August 31, 1950, was any work done on vessels owned by the Army Transport Service?

* * *

A. Well, I'd say perhaps 10 per cent of this \$60,000.

Q. And for vessels owned or operated by the Luckenback Steamship Company?

A. I don't believe I can give you any exact figure, Mr. Gill. [23]

* * *

Q. So within the last fiscal year your work on

interstate vessels has been approximately \$60,000?

A. No, sir, I don't say that, because most of these vessels in the shipyards we don't know the owner or the agent. We know that they are a large type of vessel engaged in off-shore and intercoastal trade, but except for a few special instances, I don't know the owner.

* * *

ELTON HICKOK

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * *

Q. (By Mr. Tillman): And what is your occupation, Mr. Hickok?

A. I am Manager of the Seattle Chapter of Associated General Contractors and the Seattle Construction Council.

* * *

Q. As manager, is it one of your functions to participate in negotiations with labor unions?

A. Yes, sir. [25]

* * *

(The document heretofore marked General Counsel's Exhibit No. 2 for identification, was received in evidence.)

(Testimony of Elton Hickok.)

GENERAL COUNSEL'S EXHIBIT No. 2

Agreement

1. This Agreement, made in duplicate this 30th day of June, 1943, by Seattle Construction Council, acting collectively and severally for all of its members, employers of craftsmen and labor, Party of the First Part, and Seattle, Washington, Building and Construction Trades Council, Party of the Second Part, acting collectively and severally for all their members.

* * *

4. To determine the wage scales for the Building Trades from January 1, 1944, and each calendar year thereafter to and including January 1, 1947, it is hereby agreed that we follow the following plan:

We shall take the U. S. Department of Labor's National Index on the cost of living, based on 198 items including commodities, services and rents of the average workmen in the United States, as the basis index for our purpose. If from the reports of March 15, 1944, there is an increase of 5 points or more, or any equivalent thereafter, there shall be an increase in the respective wages in our Building Trades contract. This increase shall be based upon an average wage of \$1.30 and we will take the per cent increase in the cost of living which the 5-point fluctuation equals, and that percentage of \$1.30 shall be the increase for each trade in the Building Trades. Should there be a decrease of

(Testimony of Elton Hickok.)

General Counsel's Exhibit No. 2—(Continued)

5 points in the cost of living, or its equivalent, from the preceding March 15 reports there shall be revisions downward, figured on the same basis as are the increases, with the exception that should the scales get down to those existing as of January 1, 1940, then the decrease shall cease to be automatic and Paragraph 4 of this contract shall be thrown open for revision.

It is hereby further agreed that increases or decreases which may be determined, such increases or decreases become effective as of January 1st of the following year. There shall be no work given protection after date specified.

It now appears that since the index of March 15, 1942, which was 114.3, the Department of Labor's Cost of Living indexes as of April 15, 1943, increased to 124.11, an increase of 10.8. It is further recognized that cost of living indexes have not apparently decreased since April 15, 1943, and since June 15, 1943, indexes are not yet available, we, the Joint Conference Board of the Seattle Building and Construction Trades Council, and the Seattle Construction Council, find that based upon the above increases an additional 10% of the basic wage of \$1.30 per hour, or 13c per hour, is applicable under the Master Agreement and addendums on all work on or after January 1, 1944, for the calendar year 1944.

We further agree that this increase shall be effective January 1, 1944, for the calendar year 1944

(Testimony of Elton Hickok.)

General Counsel's Exhibit No. 2—(Continued)

on all work—provided, however, that should the June 15, 1943, indexes show that the increase of 10.8 from March 15, 1942, to April 15, 1943, is reduced as of June 15, 1943, to less than 10 points by reason of Governmental action in furtherance of a “roll-back” in cost of living or other factors, the applicable increase shall be 5% of the basic wage, or 6½¢ per hour, effective January 1, 1944. All allowance and payment of increases, however, subject to such Governmental regulations then in effect which may be determinative of the rights of the parties. Should the right to pay an increase be delayed beyond January 1, 1944, by governmental regulations or action, the increase shall not be retroactive but will be paid only from the permissible date.

It is further agreed that should this 10-point increase in wages not be allowed by governmental agencies as determined under this Master Agreement, no decrease shall be made in wages until cost of living decreases to an index equal or below 5 points less than March 15, 1943, index of 114.3, or an index of 109.3 or less. Should governmental agencies grant only a portion increase in wages for 1944—then the index shall be established on a pro rata basis of the index increase over the period from March 15, 1942, to June 15, 1943, instead of March 15th index of 114.3.

Paragraph 4 of this contract shall remain in effect until January 1, 1948, unless notice is given

(Testimony of Elton Hickok.)

General Counsel's Exhibit No. 2—(Continued)

90 days prior to July 1, 1947, and shall renew itself from year to year thereafter, provided that wages shall be adjusted from time to time as provided for in Paragraph 4.

All other conditions of this Agreement shall take effect on July 1, 1943, and continue in effect thereafter from year to year until changed by the mutual agreement of the parties as provided herein. Proposed changes or modification of this Agreement shall be made by either party giving notice thereof in writing to the other party at least 90 days before July 1, and such notice shall specify the provisions desired to be changed and shall state the time and place at which negotiations may commence. The other party shall enter into negotiations not later than 30 days from the date of the receipt of said notice, after party has notified the other in writing of proposed modifications and changes in the Agreement. In the event no accord can be reached in the succeeding 60 days, arbitration as provided hereinafter shall be resorted to.

5. It is mutually agreed by the parties hereto that an Adjustment Board shall be established consisting of six (6) members to be selected by the party of the first part, and six (6) members to be selected by the party of the second part, and an equal vote to be had on all questions, three (3) from each side consisting a quorum.

5 (a) Said Adjustment Board shall meet within

(Testimony of Elton Hickok.)

General Counsel's Exhibit No. 2—(Continued)
forty-eight (48) hours on written request by either party to this Agreement.

6. It Is Further Agreed by both parties hereto that all disputes and grievances that cannot be speedily and amicably adjusted on the work shall be submitted to the accredited agents of the parties hereto, and if not adjusted by them shall be submitted to the Adjustment Board, whose decision shall be submitted in writing and be final and binding upon both parties. Pending such decision there shall be no strike or lockout, except that where non-Union men are employed the Party of the Second Part reserves the right to remove all Union men from the job. In the event the Adjustment Board shall be unable to reach an Agreement, the U. S. Department of Conciliation shall be given the opportunity to adjust the difficulty in a manner acceptable to both parties signatory hereto. If such adjustment cannot be reached both parties and the U. S. Department of Conciliation shall each appoint an umpire and their decision shall be final and binding upon both parties. The Umpire appointed by the U. S. Department of Conciliation to be satisfactory to both parties hereto.

* * *

8. Wage Scale: It is further agreed that the following wage scale is accepted and approved by both parties and shall continue during the life of this Agreement unless changed under the provisions

(Testimony of Elton Hickok.)

General Counsel's Exhibit No. 2—(Continued)
of Section 4. The classifications of employment and the wage scales applying thereto shall be in accordance with Schedule "A" attached hereto. Additions for the purpose of clarification or supplying omissions may be made from time to time by agreement between the interested parties hereto.

Except as mutually agreed to by both parties signatory hereto, the Party of the Second Part agrees that there shall be no rotation of men.

9. (a) It is further agreed that all members of the Party of the First Part hiring employees will employ none other than members of the Party of the Second part, as enumerated in Schedule "A" attached hereto entitled Wage Schedule.

9. (b) The Party of the Second Part agrees that it will require all employers, whether members of the Party of the First Part or not, to meet the conditions of Sections 7, 8 and 9 of this Agreement, and further to register and comply with the State Workmen's Compensation Act, the State Business or Occupation Tax Act, the State and Federal Social Security Acts and the State Unemployment Tax Act before the party of the Second Part will furnish men to such employer. It shall be the responsibility of the Party of the Second Part, to the best of its ability, to enforce a Union condition on all construction within the jurisdiction of said part, as defined in Paragraph 3.

(Testimony of Elton Hickok.)

General Counsel's Exhibit No. 2—(Continued)

9. (e) In consideration of the terms and covenants of this Agreement, the Party of the Second Part agrees that in the event of there being a shortage of men available for work covered by this Agreement, the Party of the Second Part shall give requirements for men of the members of the Party of the First Part preference over the requirements of contractors and builders who are not members of the Party of the First Part.

10. Working Conditions: It is further agreed that the following working rules or conditions are accepted and approved by both parties and shall continue during the life of this Agreement, unless changed under the provisions of Section 4. Additions for the purpose of clarification or supplying omissions may be made from time to time by Agreement between the interested parties thereto.

* * *

SEATTLE CONSTRUCTION
COUNCIL.

By /s/ ALTERTON,
/s/ J. M. BAILEY,
/s/ GEO. E. TURFEL,
/s/ A. F. SHEPHERD,
/s/ CHAUNCEY SHMOT.
/s/ A. B. DANIELS,
/s/ DON S. McNEUSEY,
/s/ JERRY J. WARD,

(Testimony of Elton Hickok.)

General Counsel's Exhibit No. 2—(Continued)

SEATTLE BUILDING & CONSTRUCTION
TRADES COUNCIL-CONFERENCE COM-
MITTEE.

By /s/ HARRY L. CARR,

/s/ RICHARD TRACEY,

/s/ R. BUCHANAN,

/s/ FRED SMITH,

/s/ E. J. GILL,

/s/ ROBERT GLYNN,

/s/ GEO. E. NETHERCUT,

/s/ H. V. BOWMAN,

/s/ DAVE P. McKILCOP,

/s/ W. TURNER,

/s/ CLYDE FERN,

/s/ WM. GAUNT.

Admitted in evidence September 6, 1950.

Q. (By Mr. Tillman): How does the Seattle Construction Council know what unions are bound by that agreement at any one time?

A. The members of the Building Trades Council are signatories to the agreement.

Q. And that is, they have each signed it? [26]

(Testimony of Elton Hickok.)

General Counsel's Exhibit No. 2—(Continued)

A. No, the Building Trades Council Committee has signed for their group. It provides that six from each group, the employers' group and the Building Trades Council, are the parties. That is provided for in the agreement. [27]

* * *

(The document heretofore marked General Counsel's Exhibit No. 3 for identification, was received in evidence.) [29]

* * *

GENERAL COUNSEL'S EXHIBIT No. 3

In accordance with the provisions of the Agreement now in effect between the Seattle Construction Council and Seattle Master Builders, representing the Employers, and the Seattle Building & Construction Trades Council, representing the Employees, the following are the minimum wage rates for the various classifications as set forth below—Effective January 1, 1950:

Craft Classification:	Minimum Wage Rate
Asbestos Workers.....	\$2.29½ per hour
Carpenters and Allied Trades:	
Carpenters	2.19½ per hour
Shinglers	2.28½ per hour
Floor Layers	2.29½ per hour
Bridge, Dock & Wharf	
Builders	2.24½ per hour
Pile Driver Men.....	2.24½ per hour

(Testimony of Elton Hickok.)

Pile Boom Men.....	2.29½ per hour
Cement Finishers (building) ..	2.19½ per hour
Bridge, Viaduct & Grade	
Crossings	2.22 per hour
Composition Workers	2.24½ per hour
Mastic Floor Layers.....	2.24½ per hour
Electrical Workers	2.39½ per hour
Electrical Helpers	1.79½ per hour

Iron & Steel Trades:

Bridge, Structural & Orna-	
mental Iron Workers, Rig-	
gers, Machinery Movers &	
Sheeters	2.39½ per hour
Reinforcing	2.19½ per hour

Laborers:

Building Laborers	1.79½ per hour
Concrete and Carpenters'	
Helpers	1.79½ per hour
Jackhammer	1.89½ per hour
Plasterers' Hod Carriers	2.04½ per hour
Bricklayers' Mortarmen	2.04½ per hour
Chimney & Veneer Work.....	2.04½ per hour
Base and Floor Machine Men.	1.84½ per hour
Side Sewerman	2.14½ per hour

Lathers:

Metal	2.39½ per hour
Wood	2.39½ per hour

(Testimony of Elton Hickok.)

Painters:

Painters	2.19½ per hour
Painters on Structural Steel and Bridges	2.32 per hour
Sign Painters	2.49½ per hour
Linoleum Layers, Asphalt Tile Layers and Resilient Floor Layers	2.11½ per hour

Plaster Trades:

Plasterers	2.49½ per hour
Casters	2.04½ per hour
Modelers	2.64½ per hour
Model Makers	2.18 per hour
Roofers	2.19½ per hour
Sheet Metal Workers.....	2.34½ per hour
Sandblasters	2.64 per hour

Admitted in evidence September 6, 1950.

OLIVER GAGNER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * *

By Trial Examiner Wilson:

Q. What is your occupation?

A. I am Secretary and Business Agent for Local No. 7. [30]

(Testimony of Oliver Gagner.)

* * *

Q. Now, Mr. Gagner, how many members are there in Local No. 7? A. Approximately 41.

Q. Has that number varied in any degree from oh, say, for the last three years?

A. No, not too much; just might vary one or two.

* * *

Q. In your insulation trade how does a member get a job if he is out of work?

A. Through the union.

Q. And what steps does he take?

A. He applies to the union, to the Business Agent.

Q. And what do you as Business Agent do when you get such a call?

A. If there is work I dispatch the man. If there is no work, why it is just too bad. [32]

* * *

Q. Do you have any so-called permit people at the present time? A. No.

Q. In the past have you obtained jobs for permit people? A. Yes.

* * *

SIDNEY ARTHUR LENNOX

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [33]

Direct Examination

By Mr. Tillman:

(Testimony of Sidney Arthur Lennox.)

* * *

Q. What is your occupation?

A. At present I am a farmer.

Q. Were you ever employed in the insulation trade business?

A. Yes, I was.

Q. And what sort of work did you do?

A. General insulation, meaning on ships, that is covering pipes and boilers.

Q. Over what period of time did you engage in that sort of work?

A. Well, I believe I started September 17, 1942. [34]

* * *

Q. Have you ever been a member of the local?

A. No, I have not.

Q. Did you ever apply for membership?

A. Yes, I have, twice.

Q. When did you the first time?

A. I am not certain of the date, but I think it was in 1947, the first time.

* * *

Q. And were you advised subsequently what action had been taken?

A. I was advised by a member that it was put on file. No action taken.

Q. When was the second time?

A. I believe it was approximately a year later. I haven't kept track of the dates. [35]

* * *

Q. In the course of your employment in the in-

(Testimony of Sidney Arthur Lennox.)

sulation trade, did you pay any dues or other moneys to the local?

A. Yes, I paid permit fees for—on a percentage basis—for a period of three or four years. [36]

* * *

Q. When were you last employed by the Brower Company?

A. I think it was September 10th of last year. September 10th of last year.

Q. After that date did you seek any other employment in the industry?

A. Yes, I have done——

* * *

Q. With whom did you seek employment?

A. I phoned Ben Bradley to see if there——

Q. Who is Ben Bradley?

A. He is the foreman for Charles R. Brower.

Q. And when did you phone him?

A. I phoned him in January—I don't recall what date it was, but it was the early part of January, and I asked if there was any work being done, and he informed me there was, and to get clearance, and if I could, that he had work for me.

Q. What, if anything, did you do after your conversation with Bradley?

A. I immediately phoned Oliver Gagner and was denied [37] clearance.

Q. Well, what was your conversation with Gagner?

A. Well, I don't really recall at the time, but

(Testimony of Sidney Arthur Lennox.)

he said, at the time, that he was bringing in men from Portland and Bremerton, and that there was no work for permit men. That was the general gist of the conversation. I don't remember it word for word.

Q. And what had you told Gagner?

A. That there was, that there was work for me to do, and could I have a permit card to do the work.

Q. Did you tell him where there was work?

A. Not in that conversation. No, I didn't.

Q. Did you at any time tell him?

A. Yes, I did, two weeks later when I had occasion to call him again. That time I mentioned the specific ship and the company, and that there was work there for me to do if I could get clearance. It hinged largely on his clearance—you know what I mean—it hinged on his clearance.

Q. What was the reply?

A. He again replied he wasn't prepared to put permit men to work and he was getting ample men from Portland and Bremerton.

Q. Now, before this time, which you have just testified about, during the time you were working in the industry, if one job was finished, how did you go about getting a job somewhere else in the industry?

A. We went through the same procedure I just outlined. We phoned the shop to see if there was work—that is, we phoned [38] the shop's representative, Mr. Bradley, to see if there was, and if

(Testimony of Sidney Arthur Lennox.)

there was work, we phoned whoever was the Business Agent at that time for clearance to go on that job, or whichever job, or whichever shop.

Q. Had you ever worked without clearance?

A. No, I never have.

* * *

Cross-Examination

By Mr. Gill: [39]

* * *

Q. How long did you work on that type of work, commencing at the shipyards, September, 1942?

A. How long?

* * *

Q. Six years is the total spread?

A. Six years is the total time worked.

Q. Total time worked in different shipyards then?

A. And a little uptown work, too.

Q. A little uptown work, and when did the six-year period end?

A. September 10th, last year. [43]

* * *

Q. And was there somebody in each instance there who was a skilled person, having had many years of experience, that showed you what the work was?

A. In most cases. Not in all. [44]

Q. We are referring to uptown jobs?

A. I am referring to uptown jobs, also.

Q. Well, how many of those uptown jobs were you able to do without somebody showing you how to do them?

(Testimony of Sidney Arthur Lennox.)

A. I was able to do them all. I worked with others who were running the job or who were looking after the job, but I was quite able to do my own work. [45]

* * *

Trial Examiner Wilson: Mr. Lennox, you say you are—you say your work ended on September 10, 1949?

The Witness: That is correct.

Trial Examiner Wilson: Would you tell me how it happened to end at that time?

The Witness: I was laid off at that time for lack of work. [46]

* * *

TOIVIE E. ESKOLA

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [47]

Direct Examination

* * *

Q. Were you ever employed in the insulation trade? A. Yes.

Q. And over what period of time?

A. Approximately, I would say 9½ years.

Q. What would be the start of that period?

A. I don't remember the dates, but it was approximately two years before the war started, World War II. [48]

* * *

(Testimony of Toivie E. Eskola.)

Q. Are you a member of Local 7?

A. No.

Q. Were you ever a member? A. No.

Q. Did you ever apply for membership?

A. Yes.

* * *

Q. Were you advised of what the outcome had been on your application?

A. Well, what I understood on it, it was just brought up to have it throwed out and somebody seconded it, and it was throwed out. [49]

* * *

Q. Did you pay any dues or moneys to the local?

A. Yes, I paid all during the war, and before the war, and then we—they charged us after the war, when Harigel was Business Agent, they charged us \$3.00 a month.

* * *

Q. Now, when was the last time that you worked in the insulation trade? [50]

A. I was laid off February 8th.

Q. What year? A. 1950.

Q. What company were you working for then?

A. Brower and Company.

Q. And what particular job, if you remember?

A. I think it was—the ship's name—it was the Freeman.

Q. What sort of a ship was it?

A. It was a transport, a troop transport or a

(Testimony of Toivie E. Eskola.)

hospital ship at that time. I don't just remember.

* * *

Q. And is he the one that's been identified as foreman? A. Yes, he was foreman.

Q. And when Bradley laid you off who was present at the time? A. President?

Q. Who was present? Who was around?

A. Well, Kangas was there. We were together.

Q. What was the conversation then between yourself and Bradley in relation to your [51] lay-off?

A. Well, the general practice is that, the way they have it, the Asbestos Workers, they have an agreement that the permit men go off first and then travelers and then the card men. So that when the layoff come, it was us guys to go off.

* * *

Q. Were other employees kept on, working, after you were laid off?

A. No, all the permit men were let loose.

Q. Well, were there other employees kept on?

A. Oh, yes.

* * *

Q. As far as seniority on the job is concerned, were there men kept on the job who had been placed on the job after you had been?

A. Oh, yes.

Q. As far as that particular job on the transport was concerned, how early had you been hired on the job?

(Testimony of Toivie E. Eskola.)

A. I think I was about the first or second man on the job.

Q. You were?

A. I was, and I think Al Vollan was on. That's just about, [52] around in there, first or second or third man.

Q. Did you try to get any jobs in the trade after your layoff?

A. Yes, I called Oliver Gagner and asked him if he needed men.

Q. When was that?

A. I don't remember the date, but it was at least a couple of months after I got laid off, and I didn't have anything to do, and he told me he ordered men from Portland.

* * *

Q. What do you mean by that?

A. Well, card men, I guess, from Portland to take the place.

* * *

Q. Did you ever work without obtaining a clearance from a Business Agent? A. Never have.

* * *

Cross-Examination

By Mr. Gill: [53]

* * *

Q. The type of insulating work you do, there isn't too much to it?

A. Any insulation work, there isn't too much to it.

(Testimony of Toivie E. Eskola.)

Q. All the jobs you have had have been simple jobs? [55]

A. No, they have not. I have done the regular work, the same as the rest of them have done.

Q. That is providing there is someone there that can show you what to do and somebody there to watch you, and you can watch them?

A. No, I have worked alone, and if you want to check, I was a foreman for V. S. Jenkins at Everett Pacific, and I had card men working under me.

* * *

Q. How many men did you have under you?

A. At times I had as high as 10 and as high as 30, I think, there were one time. [56]

* * *

Q. During this time that you did insulation work, there was available carpenter work, at that time, getting the mechanic carpenter's rate?

A. I'd fill in when there was no work, I'd fill in, but during the war I worked steady at [58] insulation.

* * *

Redirect Examination

By Mr. Tillman: [60]

* * *

Trial Examiner Wilson: Mr. Eskola, what was your usual procedure after you had been laid off of one job? What did you do next?

The Witness: Well, I usually always went home

(Testimony of Toivie E. Eskola.)

and done what work I had to do at home, and called up and asked for other work.

Trial Examiner Wilson: How long would you lay off?

The Witness: Oh, sometimes, two three days; maybe a week. Depend on how the holidays would break in between. [61]

* * *

Trial Examiner Wilson: Was there any insulation work to be done at that time, talking now about February, 1950?

The Witness: There was work to be done at the time because I called Ben Bradley, and he said there was work, but we couldn't get clearance, and that's why I called Gagner.

* * *

Trial Examiner Wilson: Let me ask you this: Between the time you were laid off in February until this time, two months later, did you ever call Gagner asking for work?

The Witness: Yes. [62]

Trial Examiner Wilson: You did?

The Witness: Yes. [63]

* * *

UHRO A. KANGAS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Trial Examiner Wilson:

* * *

Q. Your present occupation?

A. Piledriver.

Q. Were you ever employed in the insulation trade? A. Yes.

Q. Over what years?

A. Oh, it must have been '43 when I [64] started.

* * *

Q. Down to when?

A. Until February 8, off and on.

* * *

Q. Are you a member of Local No. 7?

A. No, I am not.

Q. Were you ever a member? A. No.

Q. Did you ever apply for membership?

A. Yes.

Q. When?

A. Oh, I can't recall—I believe it was in the last part of '48 or first part of '49. [65]

* * *

Q. Were you advised of any decision being made on the application? A. No, I left it in there.

Q. Did anyone ever tell you what happened?

(Testimony of Uhro A. Kangas.)

A. Oh, well, what one of the members said, it was thrown in the garbage can.

Q. Did you pay any dues or other moneys to the Local 7? A. Yes, I have.

Q. And to whom did you pay your money?

A. To the Business Agent.

Q. Of Local 7?

A. Yes, and for a while I paid it to our local, the Piledrivers local.

* * *

Q. Now, you say you last worked there in the trade in February of 1950, and for what company were you working then? [66]

A. Charles R. Brower—Brower.

Q. What particular job were you working on?

A. Oh, a ship—Army Transport.

* * *

Q. And how were you notified that you were no longer, that you were out of a job?

A. Well, just called us and said, "I have to lay you guys off."

Q. Who did that? A. Ben.

Q. Ben who? A. Bradley. [67]

* * *

Q. And what did he say then?

A. Well, he said he had word from the Business Agent that he had to lay us off.

* * *

Q. Do you know whether any members were kept on the job who were put on the job after you were put on?

(Testimony of Uhro A. Kangas.)

A. Yes, there was some guys left.

Q. Were there any—strike that. Did the company have any other jobs available at the time you were laid off this job? A. Yes, there was.

Q. Were you advised of any such jobs?

A. Yes.

Q. By whom?

A. Ben. He said he could use us later on.

Q. Where? A. Down at Associated.

Q. Did you get on at Associated then?

A. No.

Q. Why?

A. Because we didn't have no permit to go.

Q. Did you apply for a permit?

A. Yes, afterwards. Oh, we was laid off on about—well, it was about a month after, and they said there was no work. [68]

* * *

Q. Did you make any other attempt to get any jobs in the insulation trade other than this one call to Gagner you mentioned?

A. Well, I kept on working at it to see what was going on, but as long as I didn't clear from the union, I didn't go to work. I wasn't a union member.

* * *

Q. Did you ever work without getting a permit? [69] A. No.

* * *

(Testimony of Uhro A. Kangas.)

Cross-Examination

By Mr. Gill: [70]

* * *

Q. You have seen other mechanics working at the same trade of insulation work who were doing harder jobs than you are able to do?

A. No, I'll do the same work as they do, and I have been doing it right with them, yes.

Q. You say you can do any kind of work that any mechanic can do at that trade?

A. Yes. [76]

* * *

Trial Examiner Wilson: Mr. Ben Bradley, when he told you he had to lay you off because he had word from a Business Agent, did he tell you what Business Agent he was talking about?

The Witness: Yes, Gagner. He said Gagner said he's got to lay us off. [78]

* * *

ALFRED J. VOLLAN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tillman: [79]

* * *

Q. Have you ever worked in the insulation trade?
A. Yes, I have.

(Testimony of Alfred J. Vollan.)

Q. And over what period of time?

A. I went to work in the fall of '42, not as a mechanic, as a helper. I worked as a helper nine months wherever—that would bring it in 1943, when I was moved up to mechanic.

Q. I see, and how long did you continue working as a mechanic in that trade?

A. I have—it's been my livelihood since that time, up until this last summer.

* * *

Q. Did you ever pay any dues to Local 7?

A. I have paid permit money during the war and after. During the war, on a one per cent [80] basis.

* * *

Q. When was the last time that you worked in the trade?

A. February 8th, I think it was, the last.

Q. What company were you working for?

A. Charles Brower.

Q. And what particular job?

A. On the Freeman on the waterfront.

Q. What sort of a ship was the Freeman?

A. It was a troop transport or an Army Transport.

Q. How did your employment come to an end on that day?

A. My foreman came around and told me that the Business Agent said it would be necessary for

(Testimony of Alfred J. Vollan.)

him to lay off the permit men, of which I was one of them.

Q. Who was your foreman?

A. Ben Bradley.

Q. Were any permit men kept on after you were laid off? A. No, not to my knowledge.

Q. Were any members of Local 7 kept on the job who did [81] not—who had not been hired on that job as early as you? A. Oh, yes.

* * *

Q. Did the company ever call you back to work?

A. No, not—they never called me again to work because the company can't do that. I was told at a **couple different times that there was work for me** if I could get a clearance.

Q. Who made such statements to you?

A. Ben Bradley.

Q. Do you remember about when they were made to you?

A. Well, once it was possibly about two weeks after the time when I was laid off, and the next time was about probably a month or five weeks later.

Q. Did you make any effort to get clearance on those occasions?

A. Yes, both times I called Mr. Gagner and asked him.

Q. What did you ask him?

A. I asked him if he would clear me for a job, and he said, "No," he was going to get all his men from out of town.

(Testimony of Alfred J. Vollan.)

Q. In the trade do they have any particular name for these people that come from out of town? How do you refer to them?

A. They're referred to as travelers. [82]

* * *

Q. Did you ever work without getting clearance or permit first?

A. No.

* * *

Cross-Examination

By Mr. Gill: [83]

* * *

Q. And considering all of your insulation experience what per cent would you say was shipyard work on the one hand and what per cent would you say is uptown work?

A. Well, I would say I have 2½ years uptown work.

Q. And how many years in shipyard—how many years shipyard?

A. I'd say about 4½. [86]

* * *

Q. Are you qualified, in your own estimation, to handle any mechanic's insulation job uptown or in a shipyard?

A. Yes, sir.

Q. Brower hasn't called for you for work since February, 1950, has he? Or, has the firm?

* * *

A. Brower has not called me, although I have talked to Brower's and they said they did have work, needed men, at those times. [87]

* * *

LEROY D. LUCY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tillman: [88]

* * *

Q. Over what period of time did you work in the insulation business?

A. Well, I think I first started in 1941.

Q. Down to when?

A. February 8, 1950. [89]

* * *

Q. What local? A. Asbestos Workers.

Q. Now, you testified that the last time you worked was February 8, 1950, in the insulation trade, and what company was that for?

A. Charles Brower.

Q. And what job were you working on?

A. I think it was the General Freeman, I guess.

Q. Was it the same job as Kangas and Vollan were on?

A. Yes, it was a conversion job. [90]

Q. How did your job come to an end as far as you, yourself, were concerned on that?

A. Well, the foreman came around and told me he'd have to lay me off.

Q. And who was your foreman?

A. He says it wasn't because there wasn't any work—but—Mr. Bradley was the foreman.

* * *

(Testimony of LeRoy D. Lucy.)

Trial Examiner Wilson: Did Mr. Bradley tell you what the reason was?

* * *

The Witness: Well, I think we were informed, and as I remember it, that there was work, but he couldn't keep us on because the Business Agent of the Asbestos Workers had requested that us permit men be laid off.

Q. Were any permit men kept on after the lay-off?
A. Not to my knowledge.

Q. And were you laid off before other members or before members of the local who had been hired on that job after you?
A. Yes, I was. [91]

* * *

Q. Did you ever try to get any jobs in the insulation trade after that?
A. Yes.

Q. And how did you make your attempts to get a job?

A. Well, I found out whether there was any work available first, and then I made application to the Business Agent by telephone.

* * *

Q. Who was the Business Agent?

A. Gagner.

* * *

Q. And what did you tell him? What did he say to you?

A. I asked if I could go on a certain job or get

(Testimony of LeRoy D. Luey.)

a permit to work on a certain job or for a certain shop.

Q. What was his reply?

A. He said, "No," that he wasn't issuing any permits. [92]

* * *

MARVIN N. ROSAND

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * *

By Mr. Tillman:

Q. And your occupation at present?

A. I am a piledriver now.

Q. Were you ever employed in the insulation trade? A. Yes.

* * *

Q. What period of time did you work?

A. Well, I started out in the fall of '43, I think it was.

Q. And down to when?

A. Down to last week in December of '49. [98]

* * *

Q. Did you ever pay any dues or moneys to the local? A. Yes, I paid.

Q. Under what arrangement did you pay moneys?

(Testimony of Marvin N. Rosand.)

A. Paid through our Business Agent of the Piledrivers.

* * *

Q. Were you also paying your regular dues to the Piledrivers? A. Yes.

Q. When were you last working in insulation trades, what company were you working for?

A. Brower.

Q. And what were you working on, any particular job?

A. I was working on boats—transports at the Port of Embarkation.

Q. How long had you been working on that particular job?

A. Just on there two days—just a short job.

Q. How did your employment come to an [99] end?

A. Well, they told me the Business Agent said he'd have to lay us off and replace us with travelers.

Trial Examiner Wilson: Who said that?

The Witness: Mr. Bradley.

* * *

Q. Did you make any attempt to get a job in the trade after your layoff?

A. No, I never bothered after that. I inquired around of the boys and they all said they were not giving out any permits since the new Business Agent took over the first of the year. It was told all around there was no more permits put out, so I never bothered.

(Testimony of Marvin N. Rosand.)

Q. Up until your final layoff there in December of 1949, how did you get a job in the insulation trade?

A. Well, the first one I got was sent out through the piledrivers. Asbestos Workers Local had called the Piledrivers for men.

* * *

Q. Did you ever have [100] a job in the insulation trade without having first obtained clearance or a permit?

A. No.

* * *

Cross-Examination

By Mr. Gill: [101]

* * *

Q. By reason of this nine months' experience in the uptown work, do you consider yourself qualified to do any of the uptown jobs?

A. Well, any of the jobs that one man can do, I can do them. [104]

* * *

BEN BRADLEY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * *

By Mr. Tillman:

Q. What is your occupation? [105]

(Testimony of Ben Bradley.)

A. I am the superintendent of Brower and Company.

Q. And how long have you been superintendent?

A. About five years—six years—going on six years.

* * *

Q. During the time that you have been superintendent, how have you gone about obtaining asbestos workers?

A. Well, I call the Business Agent for the number of men needed.

* * *

Q. Then what happens after that?

A. Then he send the men down to a given spot, if he has them available.

Q. And if they are not available you obtain them other places? A. No.

Q. What do you do?

A. Get along the best we can without them. [106]

* * *

Q. Were you here while Mr. Lennox testified?

A. Yes.

Q. If you recall, he testified that he last worked for the company in September, 1949. After that date, did he have any conversation with you with respect to finding another job with the company?

A. Well, yes, he called me.

Q. Do you remember when that conversation took place?

A. Oh, in the latter part of December and the

(Testimony of Ben Bradley.)

first part of January, and the first part of February.

Q. Were there any jobs available at that time or did you need any men? A. Yes, I did.

Q. Did you inform Mr. Lennox that you needed any asbestos workers? A. Yes.

Q. And what other conversation did you have at that time, if any, with him?

A. Well, I told him I had a call in for men, to get on the job if he could.

Q. Did Mr. Lennox get on the job?

A. No. [107]

Q. Did he ever talk with you after you had told him there were jobs available? A. Yes.

Q. And when was that?

A. Well, he called me from downtown here and asked me if I had got the men that I had called for, and I told him I hadn't yet.

* * *

Q. Well, was there any more conversation at that time?

A. Well, he asked me if I'd make a specific request for him to see if that would help him get on the job, and I told him I would.

Q. And did you? A. Yes, I did.

Q. Did—to whom did you make the request?

A. Mr. Gagner.

Q. And how soon after this conversation?

A. Well, the same day.

Q. Did Lennox ever report for work then?

A. No.

(Testimony of Ben Bradley.)

Q. What did Gagner say?

A. He said he wasn't going to put out any more permit men.

Q. Now, are you also acquainted with Mr. Eskola, Mr. Kangas, Mr. Vollan and Mr. Lucy?

A. Yes.

Q. The testimony has been that they were working on an Army Transport on about February 8, 1950, and you informed them that [108] they were being laid off. Is that substantially true?

A. Yes.

Q. What was the reason for laying off any men at that time?

A. To cut down the force of men.

Q. And why were these particular men selected for lay-off?

A. Because they were permit men.

Q. Now, why are permit men selected for lay-off?

A. Well, we have a regular procedure in our agreement with the local as to how we will lay off men, and I called the Business Agent the night before and told him I had to cut down in force and what would be the procedure, if it was still the same. He told me, "You better cut the permit men out first."

Q. Did you lay off all the permit men then on that job? A. Yes.

Q. Were employees kept on the job who had been hired for that job after some of these permit men?

A. Yes.

(Testimony of Ben Bradley.)

Q. Now, you also know Marvin Rosand?

A. Yes.

Q. Had he ever worked for the company before the two days he testified to? A. Oh, yes.

Q. Do you remember that he worked for you sometime in February, '49? A. Yes.

Q. And do you know how his employment was terminated? A. Yes, I laid him off.

Q. For what reason? [109]

A. Well, to replace him with a card man.

Q. How was it that you had to replace him with a card man?

A. Well, the Business Agent, Ben Kinzman, told me that he had a card man to replace Rosand with.

Q. How long had there been this practice of laying off permit men before regular members were laid off?

A. Well, that's always been the practice.

* * *

Q. Now, with reference to the abilities of some of these men that we have talked about here, are you familiar with Sidney Lennox's work as an asbestos worker? A. Yes.

Q. How about his qualifications? How would you characterize his work?

A. Well, he's a very good mechanic; he's one of the outstanding mechanics in the trade.

Q. How about Toivie Eskola? Are you familiar with his work? A. Yes.

Q. How would you rate him?

A. He's a very good mechanic. Very dependable.

(Testimony of Ben Bradley.)

Q. And are you familiar with Mr. Kangas' work? A. Yes. [110]

Q. How would you rate him?

A. He'd be one of the leaders.

* * *

Q. You are familiar with Mr. Lucy's work?

A. Yes.

Q. How would you rate him?

A. I would say he is way better than the average, or a good man.

Q. And Mr. Vollan?

A. Well, yes, he's a good mechanic. Very good mechanic.

Q. Are you also familiar with Mr. Rosand's work? A. Yes.

Q. How would you rate him?

A. He is a very good mechanic. [111]

* * *

Cross-Examination

* * *

By Mr. Gill:

Q. You have indicated the type of work that your firm does. Are all those six people qualified to do any of that work?

A. I believe they are, yes.

Q. Does that include your uptown work? [113]

A. Yes.

Q. They are qualified to do any of your uptown work? A. Yes, they are. [114]

* * *

(Testimony of Ben Bradley.)

Q. And some of them have testified that they have had very limited experience in uptown work. One man said that he had only worked nine months, Mr. Rosand, and you still think Mr. Rosand is qualified to do any uptown job?

A. I believe that he is. The ship work is much harder work. It takes much more skill than the uptown work does, and I believe that with all his experience in the shipyards that he is well qualified to do the work uptown. I say that with respect to the men they replace him with, that he is much better than those men. [115]

* * *

Redirect Examination

By Mr. Tillman:

* * *

Q. Do you happen to know the names of any other shipline companies that the company has done work for? We already have in the record, Luckenbach. Are there any other lines you can think of?

A. Oh, yes, there are the foreign lines, like the Swedish ships that come in. We do work for them. Intercoast, Oceanic, Weyerhaeuser. [118]

Q. Is that all you can think of?

A. There are several more, but I can't think of them now. [119]

* * *

Mr. Gill: No further questions.

Trial Examiner Wilson: Mr. Bradley, since De-

(Testimony of Ben Bradley.)

cember of 1949 or February of 1950, has there ever been a time when the Brower Company has had a request in for men which has not been filled by Local 7?

The Witness: Oh, yes, several times.

Trial Examiner Wilson: Have those requests remained unfilled for any length of time at all?

The Witness: Well, yes, and then when they did get men, they were absolutely green men or men from these B locals that didn't know anything about the work, that they would put on the job, but I have had pretty near a constant call since that time for men at all times. [120]

* * *

BEN L. KINSMAN

a witness called by and on behalf of Asbestos Workers Local No. 7, being first duly sworn, was examined and testified as follows:

Direct Examination

* * *

By Mr. Gill:

Q. Your place of residence?

A. 13831 Military Road.

Q. And you have been a Business Agent of the Asbestos Workers Local No. 7?

A. I finished the term that Harigel retired from. I served from, I think, the early part of November to January. [122]

* * *

(Testimony of Ben L. Kinsman.)

Q. Now, did you have any dealings with Mr. Bradley with respect to the termination of Rosand?

A. Yes, Mr. Bradley come down to the job where I was at and informed me that Rosand was working for them, and it was to my surprise that Rosand was working, and it came about that I told Bradley that there was lots of men available, and he asked about how he should go about laying Rosand off, and I said that was up to him, and I think it was agreed that Rosand should finish the job he was on, and there was no more call for laborers from the Brower shop.

* * *

Cross-Examination

By Mr. Tillman: [124]

* * *

Q. When he advised you that he had Rosand working for him, why did you tell him you had a lot of men available?

A. I told him there were a lot of men available at the present time.

Q. Why did you tell him that?

A. Because it was for his own information if he needed more men.

Q. Then, how did it come up to the discussion where you said it was up to Bradley whether to lay off those men?

A. That was—I don't know whether it was that Brower was low on men or what. I mean low on work or what, or how the discussion got around to

(Testimony of Ben L. Kinsman.)

laying Rosand off, but I do know I definitely did not order Rosand to be laid off.

Q. Why did the discussion come up? [127]

A. Well, because of the surplus of labor, probably.

Q. Why was it any concern of Bradley's that you have a surplus of labor?

A. Well, I don't know.

* * *

Trial Examiner Wilson: Which remark was made first, that they had a surplus of labor or that Rosand should be laid off?

The Witness: I imagine it was——

Trial Examiner Wilson: What is your recollection?

The Witness: I probably told Bradley that we had lots of men, help now.

Trial Examiner Wilson: And then do I understand from your answer that the question of laying Rosand off came up after you had told Bradley that there was—that there were a lot of men available?

The Witness: I should imagine so. [128]

* * *

OLIVER GAGNER

a witness called by and on behalf of Asbestos Workers Local 7, having been previously sworn, was examined and testified as follows: [130]

Direct Examination

* * *

(Testimony of Oliver Gagner.)

Q. Mr. Lennox testified that in 1947 and again about a year later he applied for membership in the union and that he was not given membership. What was the reason?

A. He couldn't qualify. He might qualify as far as one particular employer is concerned, but we look at it from the standpoint that it is our trade. It isn't the employer's trade. He can take his \$5,000 and start a hamburger stand, but we have built up this trade and must maintain it, and that is how we make our living, and so we have a standard to go by. Our men must qualify and anybody that puts in an application must do the same as I or anyone of the 41 other members or 42, whatever it might be, so we have always considered that we had that right.

Q. In what way did Lennox not qualify?

A. Well, he was primarily a waterfront man, and, oh, right at the time there is a little work down on the waterfront, but up until the time this Korea war started, she was pretty slim pickings. They were down to probably a half a man on the waterfront so that we don't pay too much attention to the waterfront work. Where we make our living is on the uptown work.

Q. Did Lennox qualify at the time he made the two applications for the uptown work?

A. No, he did not. [136]

* * *

Q. Calling your attention to Mr. Eskola, now, he testified that he applied for membership in Sep-

(Testimony of Oliver Gagner.)

tember, 1949, and was not given membership. What was the reason? A. Not qualified.

* * *

Q. Mr. Kangas testified that he applied for membership in the latter part of 1948 or the early part of 1949, and was not given membership. Now, he is a piledriver by trade. What was the reason for the rejection? A. Not qualified.

* * *

Q. It is my recollection that the remaining individuals, Vollan, Lucy and Rosand did not testify that they had made applications to join the union. Do you have any knowledge as to whether they did or not? A. I don't think they did. [137]

* * *

Q. Well, with respect to the Brower firm, has your union issued any instructions to the Brower firm that they must operate closed shop with your Local No. 7?

A. Well, the agreement was signed previous to the Taft-Hartley Law and says they will hire nobody but members of Local No. 7. That agreement was signed in the early part of '47. [143]

* * *

Cross-Examination

By Mr. Tillman:

Q. Mr. Gagner, since February 8, 1950, has Local 7 issued any permits to anybody?

Trial Examiner Wilson: Since when?

(Testimony of Oliver Gagner.)

Mr. Tillman: Since February 8, 1950.

A. No.

Q. * * * What year was that that you had once before been a Business Agent?

A. Oh, I would say around 1943—'44. Somewheres in there.

* * *

Q. At that time was your membership around 41 people? A. Oh, probably closer to 54, 55.

Q. At that time how many permit men did you have? A. Up to 350. [146]

* * *

Q. What is the last time that Local 7 took in a member? A. Last year. [149]

* * *

Q. Do you remember when the next-to-the-last member was taken in?

A. Oh, maybe several months previous to [150] that.

* * *

Trial Examiner Wilson: How does a man become qualified for membership in your organization, please?

The Witness: When he knows the trade thoroughly. In other words, we have an examining board composed of the [151] old-timers in the local, and they examine this man and there is no set rules. They can ask them questions or they can take them out on the job, or they could send him to work for an employer and check on his work.

(Testimony of Oliver Gagner.)

Trial Examiner Wilson: Were any of the three men who applied for membership in Local 7 given such an examination?

The Witness: No, for the reason that they are mainly or primarily waterfront men.

Trial Examiner Wilson: But the fact remains that none of them were given an examination?

The Witness: That is right. It was passed on in a general meeting.

Trial Examiner Wilson: What do you mean "it was passed on in a general meeting"?

The Witness: The application was submitted at a general meeting and a member voiced an objection or whatever it might be and that was it.

Trial Examiner Wilson: Well, then, the men were not turned down because they were not qualified?

The Witness: Yes, they were. A member objected to their qualifications, which is permissible in any kind of a local or a lodge or you might say anything. If there is an objection raised, that's permissible. It might be voted down. [152]

* * *

SIDNEY ARTHUR LENNOX

a witness called by and on behalf of General Counsel, having previously been sworn, was examined and testified as follows: [153]

Redirect Examination

* * *

By Mr. Tillman:

Q. With respect to comparing the skill required in uptown work with the skill required in shipyard work, what is your observation on that score?

A. Well, a ship is under a constant motion. Consequently there is a great deal of vibration, and it requires work that is going to stay on. In other words, a building is stationary. The work you put on here today will look the same tomorrow, but a ship is under constant vibration from the waves pounding on it and the movement of the motor and the engines tend to tear down any work that is done, and what work that is done has to be put on to last a considerable length of time.

Q. I see.

A. That goes through quite a rigid inspection for that reason. In other words, Mr. Gagner tried to point out that it is slap-stick work. It is anything but that. In repair work in some cases a boat comes in for a short period of time. It is in for two or three hours, and it is going to take, the repair work is going to have to be a hurry-up job, but it has to be a good job because it is going to protect those men from being burned, and not to

(Testimony of Sidney Arthur Lennox.)

keep out heat or cold. It is for protection, and we have to do a hurry-up job. But the basic [154] ship jobs are done on conversion jobs or new work or large repair jobs and are done with a great deal of skill, regardless of how that fact is torn down by Mr. Gagner. It still requires a lot of skill, a lot more skill than a lot of fellow-members have shown.

Q. Now, you mentioned inspection. Is there inspection of your work?

A. There is a great deal of inspection. [155]

* * *

BEN BRADLEY

a witness called by and on behalf of General Counsel, being previously sworn, was examined and testified as follows:

Redirect Examination

* * *

By Mr. Tillman:

Q. Mr. Bradley, you were present when Mr. Gagner testified concerning your call to him with respect to the layoff of February 8? A. Yes.

Q. And Mr. Gagner testified that he in effect left it up to [160] you to apply whatever policy you wanted to. Would you state why you applied the policy of laying off permit men first?

A. Well, because that was his orders in this way, that I asked him, "Shall we put both ourselves in the clear here and get a ruling from the International?" and he said, "Absolutely not," that he was

still running things in Seattle and that the permit men would come off first. He threatened strike action if they weren't taken off. [161]

* * *

[Title of Board and Cause.]

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board, Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled "In the Matter of International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, and Sidney Arthur Lennox (an Individual), and Toive Elmer Eskola (an Individual), and Uhro A. Kangas and Marvin N. Rosand (Individuals), and Seattle Construction Council (and its members), Party to the Contract," Cases Nos. 19-CB-91, 19-CB-95, 19-CB-97, before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating Thomas S. Wilson as Trial Examiner for the National Labor Relations Board, dated September 5, 1950.

(2) Stenographic transcript of testimony taken before Trial Examiner Wilson on September 6, 1950, together with all exhibits introduced in evidence.

(3) Respondent's letter dated September 8, 1950, requesting additional time for filing briefs before the Trial Examiner.

(4) Copy of Chief Trial Examiner's telegram dated September 13, 1950, granting all parties additional time for the filing of briefs.

(5) Copy of General Counsel's motion to correct transcript, dated September 22, 1950, together with affidavit of service.

(6) Trial Examiner Wilson's Order entitled "Motion," dated October 10, 1950, allowing corrections to be made in transcript of record, together with affidavit of service and United States Post Office return receipts thereof.

(7) Copy of Trial Examiner Wilson's Intermediate Report, dated October 18, 1950 (annexed to item 13 hereof); copy of order transferring case to the Board, dated October 18, 1950, together with affidavit of service and United States Post Office return receipts thereof.

(8) Respondent's application for oral argument, dated October 25, 1950 (denied in Board's Decision and Order of December 15, 1950).

(9) Respondent's exceptions to the Intermediate Report, received November 1, 1950.

(10) Copy of the Decision and Order issued by the National Labor Relations Board on December 15, 1950, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

(11) Respondent's petition for reconsideration and petition to reopen record, dated December 22, 1950.

(12) General Counsel's motion for reconsideration of Board remedy and order and reply to "Respondent's petition for reconsideration and petition to reopen record," dated December 27, 1950, together with affidavit of service and United States Post Office return receipts thereof.

(13) Copy of Board's Order denying petition and motion, dated January 17, 1951.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 17th day of October, 1951.

/s/ FRANK M. KLEILER,
Executive Secretary.

[Seal] NATIONAL LABOR
RELATIONS BOARD.

[Endorsed]: No. 13139. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, A.F.L., Respondent. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed October 19, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

13139

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL ASSOCIATION OF HEAT
AND FROST INSULATORS AND ASBES-
TOS WORKERS, LOCAL No. 7, AFL,
Respondent.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. IV, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, its officers, representatives, agents, successors, and assigns. The proceedings resulting in said order are known upon the records of the Board as "In the Matter of International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, and Sidney Arthur Lennox (An Individual) and Toive Elmer Eskola (An Individual) and Uhro A. Kangas and Marvin N. Rosand (Individuals) and Seattle Con-

struction Council (and its members) Party to the **Contract, Cases Nos. 19-CB-91, 19-CB-95, and 19-CB-97.**"

In support of this petition the Board respectfully shows:

(1) Respondent is a labor organization engaged in promoting and protecting the interest of its members in the State of Washington, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on December 15, 1950, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, its officers, representatives, agents, successors and assigns. The aforesaid order provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Requiring the enforcement of its existing contract with Seattle Construction Council containing illegal union-security provisions and causing Seattle Construction Council and its members, including Chas. R. Brower & Co., to discriminate in regard to the hire and tenure of employment of persons who are not members of the Union or who have been refused membership in said Union for reasons other than their failure to tender the periodic dues and initiation fees, in violation of Section 8 (b) (2) of the Act;

(b) Restraining or coercing employees or prospective employees in the exercise of their right to refrain from any and all concerted activities listed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Notify Seattle Construction Council and its members, including Chas. R. Brower & Co., that it no longer considers the union-security provisions of the contract between it and said Council to be in effect or binding upon the parties;

(b) Notify Seattle Construction Council and its members, including Chas. R. Brower & Co., in writing, and furnish copies of said notice to the

individuals involved, that it withdraws its objections to the employment of Sidney A. Lennox, Toive E. Eskola, Uhro A. Kangas, Alfred Vollan, LeRoy Lucy, and Marvin N. Rosand, and that it has no objection to the employment of said individuals;

(c) Make whole the said Sidney A. Lennox, Toive E. Eskola, Uhro A. Kangas, Alfred Vollan, LeRoy Lucy, and Marvin N. Rosand for any loss of pay that each may have suffered by reason of the Respondent's discrimination against him, in the manner provided herein and in the section of the Intermediate Report entitled, "The remedy";

(d) Post immediately in its business office and wherever notices to its members are customarily posted, copies of the notice attached hereto marked Appendix A.⁴ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region shall, after being duly signed by an official representative of the Respondent Union, be posted by it immediately upon receipt thereof and be maintained for a period of at least sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Nineteenth Region in writing, within ten (10) days from

⁴In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," on this notice the words, "A Decree of the United States Court of Appeals Enforcing."

the date of this Order, what steps it has taken to comply herewith.

(3) On December 15, 1950, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondent, its officers, representatives, agents, successors and assigns to comply therewith.

NATIONAL LABOR
RELATIONS BOARD.

By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C. this 17th day of October, 1951.

APPENDIX A

Notice

To All Members of International Brotherhood of
Heat and Frost Insulators and Asbestos Work-
ers Union, Local No. 7, AFL

Pursuant to

A Decision and Order

of the National Labor Relations Board, and in order
to effectuate the policies of the National Labor Re-
lations Act, we hereby notify you that:

We Have notified Seattle Construction Council
and its members, including Chas. R. Brower & Co.,
that the union-security provisions contained in our
contract with them are no longer binding and of any
effect and that they are free to employ the follow-
ing individuals:

Sidney A. Lennox

Toive E. Eskola

Uhro A. Kangas

Alfred Vollan

LeRoy Lucy

Marvin N. Rosand

We Will make whole the above-named individuals
for any loss of pay suffered because of the discrimi-
nation against each of them.

We Will Not restrain or coerce employees or
prospective employees of employer members of
Seattle Construction Council, including Chas. R.
Brower & Co., or any other employer, in the exer-
cise of their right to refrain from engaging in con-

certed activities as guaranteed them by Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

We Will Not in any manner cause or attempt to cause Seattle Construction Council and its members, including Chas. R. Brower & Co., or any other employer, to discriminate against any employee or prospective employee in violation of the Act.

International Brotherhood of Heat and Frost Insulators and Asbestos Workers Union, Local No. 7, AFL,

.....,

(Union).

Dated

By,

(Representative) (Title)

This notice must remain posted for 60 days from the date of posting, and must not be altered, defaced, or covered by any other material.

[Endorsed]: Filed October 19, 1951.

[Title of Court of Appeals and Cause.]

STATEMENTS OF POINTS RELIED UPON
BY THE BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, the petitioner herein, and, in conformity with Rule 19 (6) of the rules of this Court, files this statement of points upon which it intends to rely in the above-entitled proceeding:

I. The Board properly found that the employer here involved is engaged in operations affecting commerce within the meaning of the Act.

II. Substantial evidence on the record considered as a whole supports the Board's conclusion that Respondent pursuant to the illegal union-security agreement required the employer to lay off or refuse to hire the six named employees in violation of Section 8 (b) (2) and 8 (b) (1) (A) of the Act.

III. The Board's order is valid and proper.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

NATIONAL LABOR
RELATIONS BOARD.

Dated at Washington, D. C., this 17th day of October, 1951.

[Endorsed]: Filed October 19, 1951.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America

To International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, Att: Mr. Oliver Gagner, 13709 15th Ave., N.E., Seattle, Washington, and Seattle Construction Council, Att: Mr. Josef Diamond, Hoge Bldg., Seattle, Washington.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10 (e)), you and each of you are hereby notified that on the 19th day of October, 1951, a petition of the National Labor Relations Board for enforcement of its order entered on December 15, 1950, in a proceeding known upon the records of the said Board as

“In the Matters of International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL, and Sidney Arthur Lennox (An Individual); and Toive Elmer Eskola (An Individual), and Uhro A. Kangas and Marvin N. Rosand (Individuals), and Seattle Construction Council (and its members) Party to the Contract, Cases Nos. 19-CB-91; 19-CB-95; 19-CB-97.”

and for entry of a decree by the United States Court

of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition was attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 19th day of October in the year of our Lord one thousand, nine hundred and fifty-one.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

Return on Service of Writ attached.

[Endorsed]: Filed November 9, 1951.